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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 271. 33

THE CONTINENTAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, PLAINTIFF IN ERROR,

vs.

ANN ELIZA RHOADS, ADMINISTRATRIX OF MARIS RHOADS, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED SEPTEMBER 4, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

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1 UNITED STATES, } *sct:*
Eastern District of Pennsylvania, }

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, Greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between Ann Eliza Rhoads, administratrix of Maris Rhoads, late a citizen of the State of Pennsylvania, deceased, plaintiff, and The Continental Life Insurance Company of Hartford, Connecticut, a foreign corporation incorporated by the laws of the State of Connecticut, and a citizen thereof, defendants, in a plea of trespass on the case, &c., a manifest error has intervened, to the great damage of the said The Continental Life Insurance Company of Hartford, Connecticut, defendants, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given then under your seal you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this second day of June, A. D. one thousand eight hundred and eighty-three, and in the one hundred and seventh year of the Independence of the said United States.

SAMUEL BELL,
Clerk of Circuit Court U. S.

[Endorsed:] 43. April sess., 1881. In the circuit court of the United States for the eastern district of Penna. Ann Eliza Rhoads, Adm'r'x, *v.* The Continental Life Ins. Co. of Hartford, Conn. Writ of error.

2 THE UNITED STATES OF AMERICA, *ss:*

To Ann Eliza Rhoads, administratrix of Maris Rhoads, late a citizen of the State of Pennsylvania, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania in the third circuit, wherein The Continental Life Insurance Company of Hartford, Connecticut, a foreign corporation incorporated by the laws of the State of Connecticut, & a citizen thereof, are plaintiffs, and you are defendant in

error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand, this sixth day of June, in the year of our Lord one thousand eight hundred and eighty-three.

WM. BUTLER, *Judge.*

We accept service of the above citation.

F. C. HOOTON,
R. T. CORNWELL,
Att'ys for Def'ts in Error.

[Endorsed:] 43. April sess., 1881. In the circuit court of the United States for the eastern district of Penna. Ann Eliza Rhoads, adm'r'x, *v.* The Continental Life Ins. Co. of Hartford, Conn. Citation.

3 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

ANN ELIZA RHOADS, Administratrix of Maris Rhoads, late a citizen of the State of Pennsylvania,

vs.

THE CONTINENTAL LIFE INSURANCE COMPANY OF HARTFORD, Connecticut, a Foreign Corporation Incorporated by the Laws of the State of Connecticut, and a citizen thereof.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *ss:*

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of April session, 1881. No. 43.

It is thus contained:

Be it remembered that on the 4th day of June, A. D. 1881, Ann Eliza Rhoads, by her attorney, Francis C. Hooton, Esq, comes into court here and sues forth therefrom a writ of summons
4 against The Continental Life Insurance Company of Hartford, Connecticut, which, with the endorsement and return thereto, is in the words and figures following, to wit:

5 UNITED STATES,
Eastern District of Pennsylvania, } *sct:*

The President of the United States to the marshal of the eastern district of Pennsylvania, Greeting:

We command you that you summon The Continental Life Insurance Company of Hartford, Connecticut, a foreign corporation incorporated by the laws of the State of Connecticut, and a citizen thereof, late of your district, if it may be found therein, so that it be and appear before the judges of the circuit court of the United

States in and for the eastern district of Pennsylvania, of the third circuit, at a session of the same court to be holden at Philadelphia on the first Monday of June instant, to answer to Ann Eliza Rhoads, administratrix of Maris Rhoads, late a citizen of the State of Pennsylvania, deceased, in a plea of trespass on the case. And have you then there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this fourth day of June, A. D. 1881, and in the 105th year of the Independence of the United States.

[Seal U. S. Circuit Court E. D. of Pennsylvania.]

W. VON A. WILLIAMSON,
Pro Clerk Circuit Court U. S.

JUNE 4TH, 1881.

At Philadelphia, in my district, served the within writ on The Continental Life Insurance Company of Hartford, Connecticut, by reading the same in the hearing of H. C. Aller, agent of said company, and leaving a true and attested copy thereof with him.

So answers—

JAMES N KERNS,
U. S. Marshal.
Per C. M. CORMICK, *Deputy.*

6 [Endorsed :] No. 43. Circuit court, April session, 1881. Rhoads, administratrix, &c., *vs.* Continental Life Insurance Co. of Hartford, Conn. Summons. Case. Returnable on the first Monday of June inst. Francis C. Hooton, attorney for plaintiff. Returned & filed June 6, 1881.

7 And afterwards, to wit, on the first day of March, A. D. 1882, the plaintiff, by her attorneys, comes into our said court here and files *his* declaration, which, being read, is as follows, to wit:

8 In the Circuit Court of the United States for the Eastern District of Pennsylvania. Of April Sessions, A. D. 1881. No. 43.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

Ann Eliza Rhoads, administratrix, &c., of Maris Rhoads, late a citizen of the State of Pennsylvania, deceased, complains of the Continental Life Insurance Company of Hartford, Connecticut, a foreign corporation, incorporated under the laws of the State of Connecticut, and a citizen thereof, who has been summoned in this writ to answer the plaintiff in a plea of trespass on the case, &c., for that whereas heretofore, to wit, on the twenty-ninth day of August, A. D. 1877, and in the lifetime of the said Maris Rhoads, who is now deceased, and in the district aforesaid, the aforesaid corporation, defendant, made and delivered to the said Maris Rhoads a certain policy of insurance, which the plaintiff now brings into court, and which is in the words and figures following, to wit:

No. 26229. $3,000.

Continental Life Iasurance Company of Hartford, Conn.

Life annual policy with profits.

9

Annual premium, $219.00.

Payable $219.00 cash each 12 months from Aug. 29th, 1877.

Term.

Life.

Sum insured, $3,000.

This policy of insurance witnesseth: That the Continental Life Insurance Company, in consideration of the representations made to them in the application for this policy, and of the annual premium of two hundred and nineteen dollars, to be paid to said company on or before the 29th day of August in each and every year during the continuance of this policy, do insure the life of Maris Rhoads (hereinafter called the insured), of Springfield, in the county of Delaware, State of Pennsylvania, for the benefit of Maris Rhoads aforesaid (hereinafter called the assured), in the sum of three thousand dollars for the term of his life. The said sum insured to be paid at the office of said company, in Hartford, Conn., within ninety days after due notice and satisfactory evidence of the death of the said insured during the continuance policy, and of the just claim of the assured (or proof of interest if assigned or held as security) under this policy, deducting therefrom all indebtedness to the said company on account of this policy, if any, then existing: Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is granted by the company and accepted by the assured upon the following express conditions and agreements:

First. That in case the said insured shall, without the consent of this company previously obtained in writing, pass beyond the settled limits of the United States, excepting in time of peace and general health, into the settled portions of the British Provinces of the two Canadas, Nova Scotia, and New Brunswick, or by the usual routes and means of public conveyance to those portions of Europe lying north of the forty-second parallel of north latitude and west of the fortieth meridian of longitude east from Greenwich, or by railroad to California, or shall, without such previous consent, visit, between the first day of July and the first day of November, those parts of the United States which lie south of the thirty-second parallel of north latitude, or south of the parallel of thirty-six degrees and thirty minutes of north latitude, within twenty-five miles of the Mississippi river, or one hundred miles of the Atlantic coast; or shall, without such previous consent, pass to or west of the Rocky Mountains (except by railroad to California), or shall enter upon a voyage upon the high seas (except as a passenger by the usual routes and means of public conveyance between any Atlantic ports in the United States within the before-mentioned limits, or between such last-mentioned ports and any Atlantic port in Europe lying north of the forty-second parallel of latitude); or as a mariner, engineer, fireman, conductor, brakeman, or employé in

any capacity enter upon service on any sea, sound, inlet, river, lake, or railroad, or enter into any military or naval service whatsoever (the militia not in actual service excepted); or shall, without such previous consent, be personally employed in the manufacture or transportation of gunpowder or fire-works, or of highly inflammable or explosive substances, or in submarine operations, mining, or blasting; or shall become so far intemperate or addicted to any vice or habit as to impair the health seriously or permanently, or induce delirium tremens; or shall be convicted of felony, or shall die by his own hand, either sane or insane, or by the hands of justice, or in consequence of a duel, or of the violation of any law of the several States, or of the United States, or of any Government within whose limits he may come, then this policy shall be null, void, and of no effect.

Second. That the answers, statements, and declarations contained or endorsed upon the application for this insurance, which application is hereby referred to and made part and parcel of this contract, as is fully herein recited, and upon the faith of which this agreement is made, are warranted by the assured to be true in all respects, and that if this policy has been obtained by or through any fraud, misrepresentation, or concealment, said policy shall be absolutely null and void.

Third. That this policy shall not take effect nor become binding on the company until the advance premium hereon shall have been actually paid during the lifetime of the insured, and no premium on this policy shall be considered as paid unless a receipt shall be given therefor, signed by the president or secretary of the company, and that if the said assured shall not pay the said annual premiums on or before noon of the several days hereinbefore mentioned for the payment of the same or shall not pay at maturity any notes or obligations given for the cash portion of any premium or part thereof, then and in every such case this policy shall cease and determine and said company shall not be liable for the payment of the sum insured or any part thereof.

Fourth. That in every case where this policy shall cease or become null and void all payments thereon and all dividend credits accruing therefrom shall be forfeited to said company, except that if the said insured shall die by his own hand during the continuance of this policy all premiums that shall have been received by said company hereon shall be returned to the said assured, and that if assigned the original instrument or an attested copy thereof shall be sent to said company for record and acknowledgment.

Fifth. That this policy may be withdrawn and canceled by the company at any time while in transit or while in the hanns of the agent and previous to payment of the premium.

Sixth. That if, after the receipt by this company of two or more annual premiums upon this policy, default shall be made in the payment of any subsequent premium when due, then, notwithstanding such default, this company will convert this policy into a non-participating "paid-up" policy for as many dollars as its then present value will purchase as a single net premium:

Provided, That this policy shall be transmitted to and received at the home office of this company and application made for such conversion within one year after such default.

In witness whereof the said Continental Life Insurance Company have, by their president and secretary, signed and delivered this contract, in the city of Hartford, this twenty-ninth day of August, one thousand eight hundred and seventy-seven.

J. S. PARSONS, *President.*

ROBT. E. BEECHER, *Secretary.*

And the said plaintiff says that at the time of making of said application so made as aforesaid the same was in all respects true, and was made by the said Maris Rhoads, now deceased.

And the plaintiff further saith that the said Maris Rhoads afterwards, to wit, on the second day of December, A. D. 1880, died, and that in his lifetime and down to the time of his death he, the said Maris Rhoads, performed and fulfilled and did not violate any of the conditions and agreements of the said policy of insurance, according to the true intent and meaning thereof, all of which the said company, defendant, had notice.

And the plaintiff further says that afterwards, to wit, on the thirtieth day of December, A. D. 1880, letters of administration were duly granted upon the estate of the said Maris Rhoads, deceased, to the said Ann Eliza Rhoads by the register of wills of Delaware
14 county, in the State of Pennsylvania, which said letters of admlnistration the plaintiff now brings here into court.

And the plaintiff further saith that although the said Maris Rhoads in his lifetime observed, performed, and fulfilled all things in said policy of insurance contained to be observed, performed, and fulfilled on his part, according to the tenor, true intent, and effect thereof, and that although the proofs of death of the said Maris Rhoads were duly made and certified to said company defendant, and although ninety days have long since elapsed since the said proofs of death were duly made and certified to said company defendant as aforesaid, and although the said company defendant has been requested by the said plaintiff to pay to her, as administratrix, &c., as aforesaid, the said sum of three thousand dollars in said policy of insurance assumed *due* agreed to be paid by the said company defendant, yet the said company defendant has not paid the same or any part thereof, and the same is wholly due and in arrear and unsatisfied, contrary to the said promise as made as aforesaid by the defendant.

2d Count.

And whereas, also, heretofore, to wit, on the twenty-ninth day of August, A. D. 1877, and in the lifetime of the said Maris Rhoads, who is now deceased, and in the district aforesaid, the aforesaid corporation defendant made and delivered to the said Maris Rhoads a certain other policy of insurance which the plaintiff now brings into court, and which is in the words and figures following, to wit:

15 No. 1832. $2,000.

Continental Life Insurance Company of Hartford, Conn.

Non-forfeiture. Life Policy.

This policy of insurance witnesseth: That the Continental Life Insurance Company, in consideration of the representations made to them in the application for this policy and of the annual premium of one hundred and fifty and $\frac{52}{100}$ dollars,*

Without profits.

to be paid to said company on or before the 20th day of August in each and every year during the continuance of this policy, do insure the life of Maris Rhoads (hereinafter called the insured), of Springfield, in the

Annual premium. $114.52.

county of Delaware, State of Pennsylvania, for the benefit of Maris Rhoads aforesaid (hereinafter called the assured), in the sum of two thousand dollars for the term of his life. The said sum insured to be paid at the office of said company at Hartford, Conn., within ninety days after due notice and satisfactory evidence of the death of the said insured during the continuance of this policy, and of the just claim of the assured (or proof of interest if assigned or held as security) under this policy, deducting therefrom all indebtedness to the said company on account of this policy, if any, then existing:

* Payable $114.52 cash each 12 months from Aug. 29, 1877.

Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is granted by the company and accepted by the assured upon the following express conditions and agreements:

16 Term. Life.

First. That in case the said insured shall, without the consent of this company previously obtained in writing, pass beyond the settled limits of the United States (excepting in time of peace and general health into the settled portions of the British provinces of the two Canadas, Nova Scotia, and New Brunswick, or by the usual routes and means of public conveyance to those portions of Europe lying north of the forty-second parallel of north latitude and west of the fortieth meridian of longitude east from Greenwich or by railroad to California); or shall, without such previous consent, visit, between the first day of July and the first day of November, those parts of the United States which lie south of the thirty-second parallel of north latitude or south of the parallel of thirty-six degrees and thirty minutes of north latitude, within twenty-five miles of the Mississippi river or one hundred miles of the Atlantic coast; or shall, without such previous consent, pass to or west of the Rocky mountains (except by railroad to California); or shall enter upon a voyage upon the high seas (except as a passenger by the usual routes and means of public conveyance between any Atlantic ports in the United States within the before-mentioned limits, or between such last-mentioned ports and any Atlantic port in Europe lying north of the forty-second parallel of north latitude);

Sum insured. $2,000.

or as a mariner, engineer, fireman, conductor, brakeman, or employé in any capacity, enter upon service on any sea, sound, inlet,
17 river, lake, or railroad, or enter into any military or naval service whatsoever (the militia not in actual service excepted); or shall, without such previous consent, be personally employed in the manufacture or transportation of gunpowder or fireworks, or of highly inflammable or explosive substances, or in submarine operations, mining, or blasting; or shall become so far intemperate or addicted to any vice or habit as to impair the health seriously or permanently, or induce delirium tremens, or shall be convicted of felony, or shall die by his own hand, either sane or insane, or by the hands of justice, or in consequence of a duel, or of the violation of any law of the several States or of the United States, or of any government within whose limits he may come, then this policy shall be null, void, and of no effect.

Second. That the answers, statements, and declarations contained in or endorsed upon the application for this insurance—which application is hereby referred to and made part and parcel of this contract, as is fully herein recited, and upon the faith of which this agreement is made—are warranted by the assured to be true in all respects, and that if this policy has been obtained by or through any fraud, misrepresentation, or concealment said policy shall be absolutely null and void.

Third. That this policy shall not take effect nor become binding on the company until the advance premium hereon shall
18 have been actually paid during the lifetime of the insured; and no premium on this policy shall be considered as paid unless a receipt shall be given therefor, signed by the president or secretary of the company; and that if said assured shall not pay the said annual premiums on or before noon of the several days hereinbefore mentioned for the payment of the same, or shall not pay at maturity any notes or obligations given for the cash portion of any premium or part thereof, then and in every such case this policy shall cease and determine, and said company shall not be liable for the payment of the sum insured or any part thereof except as hereinafter provided.

Fourth. That after the receipt by this company of three or more annual premiums upon this policy default shall be made in the payment of any subsequent premium when due, then, notwithstanding such default, this company will convert this policy into a paid-up policy agreeably to the table of paid-up insurance given upon the back of this policy: Provided, That this policy shall be transmitted to and received by this company, and application made for such conversation within one year after such default.

Fifth. That in every case where this policy shall cease or be or become null and void all payments thereon shall be forfeited to said company, except that if the said insured shall die by his own hand during the continuance of this policy, all premiums that
19 shall have been received by said company hereon shall be returned to the said assured, and that if assigned the original

instrument or an attested copy thereof shall be sent to said company for record and acknowledgment.

Sixth. That this policy may be withdrawn and cancelled by the company at any time while in transit, or while in the hands of the agent, and previous to payment of the premium.

In witness whereof the said Continental Life Insurance Company have, by their president and secretary, signed and delivered this contract, in the city of Hartford, Conn., this twenty-ninth day of August, one thousand eight hundred and seventy-seven.

J. S. PARSONS, *President.*

ROB'T E. BEECHER, *Secretary.*

And the said plaintiff says that at the time of making the application referred to in said last-mentioned policy of insurance the representations therein made were in all respects true. And the plaintiff further says that the said Maris Rhoads afterwards, to wit, on the second day of December, A. D. 1880, died, and that in his lifetime and down to the day of his death he, the said Maris Rhoads, performed and fulfilled and did not violate any of the conditions and agreements of the said policy of insurance last above mentioned, according to the true intent and meaning thereof.

And the plaintiff further saith that afterwards, to wit, on the thirtieth day of December, A. D. 1880, letters of administra-
20 tion were duly granted upon the estate of the said Maris Rhoads, deceased, to the said Ann Eliza Rhoads by the register of wills of Delaware county, in the State of Pennsylvania, which said letters of administration the plaintiff now brings here into court.

And the plaintiff further saith that although the said Maris Rhoads in his lifetime observed, performed, and fulfilled all things in the said last-mentioned policy of insurance contained to be observed, performed, and fulfilled on his part, according to the tenor, true intent, and effect thereof, and that although the proofs of death of the said Maris Rhoads were duly made and certified to said company defendant; and although ninety days have long since elapsed since the said proofs of death were duly made and certified to said company defendant as aforesaid, and although the said company defendant has been requested by the said plaintiff to pay to her, as administratrix, &c., as aforesaid, the said sum of two thousand dollars in said last-mentioned policy of insurance assumed and agreed to be paid by the said company defendant, yet the said company defendant has not paid the same or any part thereof, and the same is wholly due and in arrear and unsatisfied, contrary to the said promise as made as aforesaid by the defendant.

3d Count.

And whereas, also, the defendant, on the third day of June, 1881, was indebted to the plaintiff in the sum of ten thousand dollars for money received by the defendant for the use of the plaintiff,
21 and in ten thousand dollars for interest upon and for the forbearance by the plaintiff to the defendant, at his request, of

moneys due and owing from the defendant to the plaintiff, and in the sum of ten thousand dollars for money found to be due and owing from the defendant to the plaintiff on an account then stated between them.

And the defendant afterwards, to wit, on the day and year last aforesaid, in consideration of the premises, respectively promised the plaintiff to pay her the said several sums of money above mentioned respectively on request, yet the defendant has disregarded his last-mentioned promise and has not paid any of the said moneys, or any part thereof, to the plaintiff's damage ten thousand dollars, and thereupon she brings her suit.

F. C. HOOTON,
R. T. CORNWELL,
Pl'ff's Att'ys.

22 (Endorsed:) No. 43. April sess., 1881. C. C. U. S., E. D. of Pa. Rhoads, adm'x, &c., *vs.* The Continental Life Insurance Co. Declaration. Hooten, Cornwell. Filed March 1, 1882.

23 And afterwards, to wit, on the 14th day of March, A. D. 1882, the plaintiff, by her attorneys, comes into our said court here and files a bill of particulars, as follows, to wit:

In the C. C. U. S. of Pa. April Sess., 1881.

RHOADS
vs.
CONTINENTAL LIFE INS. CO. } No. 43.

WESTCHESTER, PA., *March* 7, 1882.

Samuel C. Perkins, Esq., Defendant's Att'y.

DEAR SIR: Yours of yesterday requesting us to furnish you with a bill of particulars of the plaintiff's claim under the common courts of the declaration filed by leave of the court is received.

In reply we have to say that the particulars of the plaintiffs claim under all the courts are fully mentioned and set out in the first two counts of the said declaration.

We do not recognize any stay of the rule to plead by the above call for bill of particulars.

Yours, &c.,

F. C. HOOTON,
R. T. CORNWELL,
Pl'ff's Att'y.

24 (Endorsed:) 43. April sess., 1881. C. C. U. S. Rhoads *vs.* Continental Life Ins. Co. Bill of particulars. Filed March 14, 1883.

25 And afterwards, to wit, on the 15th day of March, A. D. 1882, the defendant, by its attorney, Samuel C Perkins, Esq., comes into our said court here and files a demurrer to plaintiff's 1st and 2nd counts of declaration, as follows, to wit:

C. C. U. S., E. D. of Pa. April Sess., 1881.

RHOADS, Adm'r'x,
v.
CONTINENTAL LIFE INS. Co. } No. 43.

And the defendants say that the new declaration filed March first, 1882, by leave of the court, is not sufficient in law. And the defendants state and show to the court here the following causes of demurrer to the said new declaration—that is to say:

1. That the first count of said new declaration is insufficient in law in law in this: that it avers no interest in the said policy of insurance in said count mentioned at the time of his death in plaintiff's intestate.

2. Because the said first count of said new declaration sets forth a policy of insurance which was issued upon certain alleged and therein set forth conditions, the first of which contained several separate, distinct, and independent specifications of certain acts, which, if committed by said insured, would render said policy null and void and of no effect.

And said first count of said declaration does not negative separately, distinctly, and independently the commission by the said insured of the said respective acts.

3. Because the said first count of the said declaration sets
26 forth another condition in the said policy thereby declared upon that the same could not take effect nor become binding on the company until the advanced premium thereon shall have been actually paid during the lifetime of the insured, and that no premium on said policy should be considered as paid unless a receipt should be given therefor, signed by the president or secretary of the company. And the said first count of said declaration does not aver the actual payment of said advanced premium, nor of any subsequent premiums, nor of the giving of a receipt for any of said premiums signed by the president or secretary of the company.

4. Because the said first count of said new declaration sets forth a condition in the policy thereby declared upon that if the said assured should not pay the said annual premiums on or before noon of the several days thereinbefore mentioned for the payment of the same, or should not pay at maturity any notes or obligations given for the cash portion of any premium or part thereof, then and in every such case the said policy should cease and determine, and the company should not be liable for the payment of the sum insured or any part thereof. And the said first count of said new declaration does not contain any averment that the said annual premiums were paid on or before noon of the several days in the said policy of insurance mentioned for the payment of the same, nor does it aver the payment at maturity of any notes or obligations given for the cash portion of said premiums or part thereof.

27 5. Because in the said first count of said declaration, which is in assumpsit, upon an instrument not under seal, the plaintiff has made profert of said instrument.

6. Because in said first count of said declaration plaintiff has un-

dertaken to make profert of an instrument of writing, and it appears upon the face of the instrument as set forth that there is a certain application mentioned therein and thereby referred to and made parcel of the said contract or instrument of writing, and which is not set forth in the said first count of said declaration.

7. And the defendants, by their attorney, crave oyer of the said instrument of writing of which profert is made in the said first count of plaintiff's said declaration, and it is read to them, and they also crave oyer of the application mentioned in the said instrument of writing or policy of insurance, and it is read to them, including *inter alia* the following clause and agreement: "And it is agreed by the undersigned (being the said Maris Rhoads, the plaintiff's intestate) that any untrue or fraudulent answers, any suppression of facts in regard to the party's health, or neglect to pay the premium on or before the day it becomes due, or to pay at maturity any notes given for the cash portion of any premium or part thereof shall render the policy null and void and forfeit all payments thereon, except as expressly provided to the contrary in the policy.

Also that the assurance hereby applied for shall not be bind-
28 ing on this company until the amount of the first premium, as stated therein, shall be received by said company or the authorized agent thereof during the lifetime of the person whose life is insured, and the foregoing answers being true at the date of the delivery of the policy." And the defendants say that the said first count of plaintiff's said declaration is insufficient in law, because it does not allege that there was no untrue or fraudulent answers, nor does it aver that there was no suppression of facts in regard to the party's health, nor does it aver that there was no neglect to pay the premium on or before the day it became due, nor does it aver that there was no neglect to pay at maturity any notes given for the cash portion of any premium or part thereof.

8. Because the policy of insurance set forth in the first count of plaintiff's said declaration stipulated that any moneys which might otherwise be due and payable thereon on account of the death of the assured should be payable only within ninety days after due notice and satisfactory evidence of the death of the said insured during the continuance of the policy and of the just claims of the assured. And the said first count does not allege due notice and satisfactory evidence of the death of the said insured during the continuance of the policy nor of the just claim of the assured.

9. That the said first count of said declaration is in other respects uncertain, informal, and insufficient.

29 10. That the second count of said new declaration is insufficient in law in this: That it avers no interest in the said policy of insurance in said count mentioned at the time of his death in plaintiff's intestate.

11. Because the second count of said new declaration sets forth a policy of insurance which was issued upon certain alleged and therein set forth conditions, the first of which contained several separate, distinct, and independent specifications of certain acts which if committed by said insured would render said policy null and void

and of no effect. And said second count of said declaration does not negative separately, distinctly, and independently the commission, by the said insured, of the said respective acts.

12. Because the said second count of the said declaration sets forth another condition in the said policy thereby declared upon that the same could not take effect nor become binding on the company until the advanced premium thereon shall have been actually paid during the lifetime of the insured, and that no premium on said policy should be considered as paid unless a receipt should be given therefor, signed by the president or secretary of the company. And the said second count of said declaration does not aver the actual payment of said advanced premium, nor of any subsequent premiums, nor of the giving of a receipt for any of said premiums, signed by the president or secretary of the company.

13. That the said second count of said new declaration sets
30 forth a condition in the policy thereby declared upon that if the said assured should not pay the said annual premiums on or before noon of the several days thereinbefore mentioned for the payment of the same, or should not pay at maturity any notes or obligations given for the cash portion of any premium or part thereof, then and in every such case the said policy should not be liable for the payment of the sum insured or any part thereof. And the said second count of said new declaration does not contain any averment that the said annual premiums were paid on or before noon of the several days in the said policy of insurance mentioned for the payment of the same, nor does it aver the payment at maturity of any notes or obligations given for the cash portion of said premiums or part thereof.

14. Because in the said second count of said declaration, which in assumpsit, upon an instrument not under seal, the plaintiff has made proffert of said instrument.

15. Because in said second count of said declaration plaintiff has undertaken to make profert of an instrument of writing, and it appears upon the face of the instrument, as set forth, that there is a certain application mentioned therein and thereby referred to and made parcel of the said contract or instrument of writing, and which is not set forth in the said second count of said declaration.

16. And the defendants, by their attorney, crave oyer of
31 the said instrument of writing of which profert is made in the said second count of plaintiff's declaration, and it is read to them; and they also crave oyer of the application mentioned in the said instrument of writing or policy of insurance, and it is read to them, including, *inter alia*, the following clause and agreement: "And it is agreed by the undersigned (being the said Maris Rhoads, the plaintiff's intestate) that any untrue or fraudulent answers, any suppression of facts in regard to the party's health, or neglect to pay the premium on or before the day it becomes due, or to pay at maturity any notes given for the cash portion of any premium or part thereof, shall render the policy null and void, and forfeit all payments thereon, except as expressly provided to the contrary in the policy; also, that the assurance hereby applied for shall not be

binding on this company until the amount of the first premium, as stated therein, shall be received by said company or the authorized agent thereof during the lifetime of the person whose life is insured, and the foregoing answers being true at the date of the delivery of the policy." And the defendants say that the said first count of plaintiff's said declaration is insufficient in law because it does not allege that there were no untrue or fraudulent answers, nor does it aver that there was no suppression of facts in regard to the party's health, nor does it aver that there was no neglect to pay the premium on or before the day it became due, nor does it aver
32 that there was no neglect to pay at maturity any notes given for the cash portion of any premium or part thereof.

17. Because the policy of insurance set forth in the second count of plaintiff's said declaration stipulated that any moneys which might otherwise be due and payable thereon on account of the death of the assured should be payable only within ninety days after due notice and satisfactory evidence of the death of the said insured during the continuance of the policy and of the just claim of the assured. And the said second count does not allege due notice and satisfactory evidence of the death of the said insured during the continuance of the policy nor of the just claims of the assured.

18. That the said second count of said declaration is in other respects uncertain, informal, and insufficient.

SAM. C. PERKINS,
Defts' Atty.

(Endorsed:) 43. April sess., 1881. C. C. U. S. Rhoads *vs.* Continental Life Ins. Co. Defendants' demurrer to pl'ff's 1st & 2nd counts, new declaration. Filed March 15, 1882. S. C. Perkins.

33 And on the day and year last aforesaid the defendant, by its attorney, Samuel C. Perkins, Esq., comes into our said court here and files its plea to the 3rd count of plaintiff's declaration, which is as follows, to wit:

C. C. U. S., E. D. of Pa. April sess., 1881.

RHOADS, Adm'x
vs.
CONTINENTAL LIFE INS. COMPANY. } No. 43.

Defendants, as to the third count of plaintiff's additional declaration, filed by leave of the court, plead *non assumpserunt.*

SAM'L C. PERKINS,
Def'ts' Att'y.

(Endorsed:) 43. April sess., 1881. C. C. U. S. Rhoads *vs.* Continental Life Ins. Co. Defendants' plea to pl'ff's 3d count of new declaration. Filed March 15, 1882. S. C. Perkins.

34 And afterwards, to wit, on the 16th day of March, A. D. 1882. the plaintiff, by her attorneys, come- into our said court here and files her joinder to the defendants' demurrer, which is as follows, to wit:

C. C. U. S., E. D. of Pa. April sess., 1881.

RHOADS, Adm'x, &c.,
vs.
CONTINENTAL LIFE INSURANCE COMPANY. } No. 43.

And the said plaintiff says that the new declaration is sufficient in law.

F. C. HOOTON AND
R. T. CORNWELL,
Pl'ff's Att'ys.

Endorsed: 43. April sess., 1881. Rhoads, adm'x, *vs.* Continental Life Ins. Co. Joinder in demurrer. Hooton, Cornwell. Filed March 16, 1882.

35 And afterwards, to wit, on the 21st day of April, A. D. 1882, this cause coming on to be heard upon defendants' demurrer to the plaintiff's declaration, and having been argued by counsel for the respective parties, the court order the demurrers to be overruled with leave to the defendant to plead over.

And afterwards, to wit, on the 27th day of April, A. D. 1882, the defendant, by its attorney, comes into our said court here and files its pleas to the 1st and 2nd counts of plaintiff's declaration, as follows, to wit:

36 C. C. U. S., E. D. of Pa.

RHOADS, Adm'r'x, *vs.* CONTINENTAL LIFE INSURANCE COMPANY.

The defendants, by Samuel C. Perkins, their attorney, plead:

1. As to the first count of plaintiff's declaration, that the policy of insurance therein mentioned and set forth was issued by the defendants and accepted by the plaintiff's intestate upon, *inter alia*, the following express condition and agreement, to wit: (2). "That the answers, statements, and declarations contained in or endorsed upon the application for the said insurance, which application was thereby referred to and made part and parcel of the said policy of insurance as if fully therein recited, and upon the faith of which the said policy of insurance was issued, are warranted by the insured," to wit, the said Maris Rhoads, the plaintiff's intestate, "to be true in all respects, and that if the said policy had been obtained by or through any fraud, misrepresentation, or concealment, said policy should be absolutely null and void."

And the defendants in fact say that in the said application for insurance, so made as aforesaid, part of the said policy of insurance, one of the answers therein, being the answer to question 15, which said question was: "Has the party," meaning thereby the plaintiff's intestate, "whose life is proposed to be insured, ever had any of the following diseases, to wit (*inter alia*) insanity?" was

37 "None."

And the defendants say that the said insurance was false and untrue, for as much as the said Maris Rhoads, the plaintiff's in-

testate, had theretofore had the said disease, "insanity," and then was insane at the time when the said policy of insurance was issued; wherefore the defendants say that the said policy of insurance was and is void in law; and this the defendants are ready to verify.

2. And for further plea in this behalf the defendants, as to the second count of plaintiff's declaration, say that the policy of insurance in the said count mentioned was issued by the defendants and accepted by the plaintiff's intestate upon, *inter alia*, the following express condition and agreement, to wit: (2). "That the answers, statements, and declarations contained in or endorsed upon the application for the said insurance, which application was thereby referred to and made part and parcel of the said policy of insurance last mentioned as if fully therein recited, and upon the faith of which the said policy of insurance last mentioned was issued, are warranted by the insured," to wit, the said Maris Rhoads, the plaintiff's intestate, "to be true in all respects, and that if the said policy had been obtained by or through any fraud, misrepresentation, or concealment, said policy should be absolutely null and void."

And the defendants in fact say that in the said application for insurance, so made as aforesaid part of the said policy of insurance last mentioned, one of the answers therein, being the answer to question 15, which said question was: "Has the party," meaning thereby the plaintiff's intestate, "whose life is proposed to be insured ever had any of the following diseases, to wit (*inter*
38 *alia*), insanity?" was "None." And the defendants say that the said answer was false and untrue, for as much as the said Maris Rhoads, the plaintiff's intestate, had theretofore had the said disease, "insanity," and then was insane at the time when the said policy of insurance last mentioned was issued; wherefore the defendants say that the said policy of insurance last mentioned was and is void in law. And this the defendants are ready to verify.

3. And for a further plea in this behalf the defendants, as to the first count of plaintiff's declaration, say that the policy of insurance therein mentioned was issued by the defendants and accepted by the plaintiff's intestate upon, *inter alia*, the following express condition and agreement, to wit: (2). That the answers, statements, and declarations contained in or endorsed upon the application for the said insurance, which application was thereby referred to and made part and parcel of the said last-mentioned policy of insurance as if fully therein recited, and upon the faith of which the said last-mentioned policy of insurance was issued, are warranted by the assured, to wit, the said Maris Rhoads, the plaintiff's intestate, to be true in all respects, and that if the said last-mentioned policy had been obtained by or through any fraud, misrepresentation, or concealment, the said policy should be absolutely null and void.

And the defendants in fact say that in the said application for insurance, so made as aforesaid part and parcel of last-mentioned policy of insurance, one of the answers therein, being the answer to question 11, which said question was: "Is the party," meaning thereby the said plaintiff's intestate, "whose life was proposed
39 to be insured, now in good health and free from any disorder,

infirmity, or weakness?" was "Yes." And the defendants say that the said answer was false and untrue, for as much as the said Maris Rhoads, the plaintiff's intestate, at the time when the said application was made and the said last-mentioned policy of insurance was issued was insane; wherefore the defendants say that the said last policy of insurance was absolutely null and void. And this the defendants are ready to verify.

4. And for a further plea in this behalf the defendants, as to the second count of plaintiff's declaration, say that the policy of insurance therein mentioned was issued by the defendants and accepted by the plaintiff's intestate upon, *inter alia*, the following express condition and agreement, to wit: (2.) That the answers, statements, and declarations contained in or endorsed upon the application for the said insurance, which application was thereby referred to and made part and parcel of the said last-mentioned policy of insurance as if fully therein recited, and upon the faith of which the said last-mentioned policy of insurance was issued, are warranted by the assured, to wit, the said Maris Rhoads, the plaintiff's intestate, to be true in all respects, and that if the said last-mentioned policy had been obtained by or through any fraud, misrepresentation, or concealment the said policy should be absolutely null and void. And the defendants in fact say that in the said application for insurance, so made as aforesaid part and parcel of the last-mentioned policy of insurance, one of the answers therein, being the answer to question 11, which said question was, "Is the party," meaning the said plaintiff's intestate, whose life was proposed to be insured, "now in good health and free from any disorder, infirmity, or weakness?" was "Yes." And the defendants say that the said answer was false and untrue, for as much as the said Maris Rhoads, the plaintiff's intestate, at the time when the said application was made and the said last-mentioned policy of insurance was issued, was insane. Wherefore the defendants say that the said last-mentioned policy of insurance was absolutely null and void. And this the defendants are ready to verify.

5. And for a further plea in this behalf the defendants, as to the said first count of the plaintiff's declaration, say that the said policy of insurance in the said count mentioned was made and issued by the defendants and accepted by plaintiff's intestate upon, *inter alia*, the following express express condition and agreement, to wit: "That in case the said insured," meaning thereby the said Maris Rhoads, the plaintiff's intestate, "shall die by his own hand, either sane or insane, then the said last-mentioned policy should be null and void and of no effect." And the defendants in fact say that the said Maris Rhoads did die by his own hand during the continuance of the said last-mentioned policy; wherefore the same became null and void and of no effect. And this the defendants are ready to verify.

6. And for a further plea in this behalf the defendants, as to the said second count of the plaintiff's declaration, say that the said policy of insurance in the said count mentioned was made and issued by the defendants and accepted by the plaintiff's intes-

41 tate upon, *inter alia*, the following express condition and agreement, to wit: "That in case the said insured," meaning thereby the said Maris Rhoads, the plaintiff's intestate, "shall die by his own hand, either sane or insane, then the said last-mentioned policy should be null and void and of no effect." And the defendants in fact say that the said Maris Rhoads did die by his own hand during the continuance of the said last-mentionted policy; wherefore the same became null and void and of no effect. And this the defendants are ready to verify.

7. And for a further plea in this behalf the defendants say, as to the said first count in said plaintiff's declaration, that the policy of insurance therein mentioned was obtained from the defendants by the fraad, covin, and wrongful concealment of certain material information which ought then to have been communicated to the defendants, and by the misrepresention of the said Maris Rhoads, the plaintiff's intestate; wherefore the defendants say that the said last-mentioned policy of insurance became and was absolutely null and void. And this the defendants are ready to verify.

8. And for a further plea in this behalf the defendants say, as to the said second count in said plaintiff's declaration, that the policy of insurance therein mentioned was obtained from the defendants by the fraud, covin, and wrongful concealment of certain material information which ought then to have been communicated to the defendants and by the misrepresentations of the said Maris Rhoads, the plaintiff's intestate; wherefore the defendants say that the said last-mentioned policy of insurance became and was absolutely null and void. And this the defendants are ready to verify.

42 9. And for a further plea in this behalf as to the said first count of the said plaintiff's declaration the defendants say that the policy of insurance in said count mentioned was obtained from the defendants by the fraud and misrepresentation of the said Maris Rhoads, the plaintiff's intestate, to wit, as to the health of the said Maris Rhoads at the time of the making of the application for said policy and of the issuing of said policy, and as to his freedom from any disorder, infirmity, and weakness, and as to the diseases with which the said Maris Rhoads had been afflicted, and by the suppression by the said Maris Rhoads of facts in regard to his health, to wit, that the said Maris Rhoads had theretofore and then still had the disease of insanity; wherefore the defendants say that the said last-mentioned policy of insurance became and was absolutely null and void. And this the defendants are ready to verify.

10. And for a further plea in this behalf as to the said second count of the said plaintiff's declaration the defendants say that the policy of insurance in said count mentioned was obtained from the defendants by the fraud and misrepresentation of the said Maris Rhoads, the plaintiff's intestate, to wit, as to the health of the said Maris Rhoads at the time of the making of the application for said policy and of the issuing of the said policy, and as to his freedom from any disorder, infirmity, and weakness, and as to the diseases with which the said Maris Rhoads had been afflicted, and by the suppression by the said Maris Rhoads of facts in regard to his health,

to wit, that the said Maris Rhoads had theretofore and then still had the disease of insanity; wherefore the defendants say
43 that the said last-mentioned policy of insurance became and was absolutely null and void. And this the defendants are ready to verify.

11. And for a further plea in this behalf the defendants say, as to the first count of plaintiff's declaration, that the policy of insurance in said count mentioned was made and issued by the defendants and accepted by the plaintiff's intestate upon, *inter alia*, the condition that the answers, statements, and declarations contained in or endorsed upon the application for the said insurance, which application was thereby referred to and made a part and parcel of the contract as if fully therein recited, and upon the basis of which the agreement was made, were warranted by the assured, to wit, the said Maris Rhoads, to be true in all respects, and the defendants say that certain answers, statements, and declarations of the said Maris Rhoads contained in the said application were at the time of the making thereof false and untrue; wherefore the defendants say that the said last-mentioned policy of insurance was and is void in law. And this they are ready to verify.

12. And for a further plea in this behalf the defendants say, as to the second count of plaintiff's declaration, that the policy of insurance in said count mentioned was made and issued by the defendants and accepted by the plaintiff's intestate upon, *inter alia*, the condition that the answers, statements, and declarations contained in or endorsed upon the application for the said insurance, which application was thereby referred to and made part and parcel of the contract as if fully therein recited, and upon the basis of which the agreement was made, were warranted by the assured, to wit,
44 the said Maris Rhoads, to be true in all respects, and the defendants say that certain answers, statements, and declarations of the said Maris Rhoads contained in the said application were at the time of the making thereof false and untrue; wherefore the defendants say that the said last-mentioned policy of insurance was and is void in law. And this they are ready to verify.

13. And for a further plea in this behalf the defendants, as to the first count of plaintiff's declaration, say that the policy of insurance therein mentioned was made and issued by the defendants and accepted by the plaintiff's intestate upon, *inter alia*, the condition that the answers, statements, and declarations contained or endorsed upon the application for the said insurance, which application was thereby referred to and made part and parcel of the contract as if fully therein recited, and upon the basis of which the agreement was made, were warranted by the assured, to wit, the said Maris Rhords, to be true in all respects, and that if the said policy had been obtained by or through any fraud, misrepresentation, or concealment, the said last-mentioned policy should be absolutely null and void. And the defendants in fact say that in the said application for insurance, so made as aforesaid part of the said last-mentioned policy of insurance, it was thereby declared that the party, meaning the said Maris Rhoads, the plaintiff's intestate, is now, to wit, at the time of the

making of said application, in good health, of sound body and mind, and does ordinarily enjoy good health. And the defendants say that the said declaration was false and untrue, and that
45 the said Maris Rhoads was not at the time of making of the said application, and of the making and issuing of the said last-mentioned policy of insurance based thereon, in good health, of sound body and mind, and that he did not ordinarily enjoy good health; wherefore the defendants say that the said last-mentioned policy of insurance became and was absolutely null and void. And this the defendants are ready to verify.

14. And for a further plea in this behalf the defendants, as to the second count of plaintiff's declaration, say that the policy of insurance therein mentioned was made and issued by the defendants and accepted by the plaintiff's intestate upon, *inter alia*, the condition that the answers, statements, and declarations contained in or endorsed upon the application for the said insurance, which application was thereby referred to and made part and parcel of the contract as if fully therein recited, and upon the basis of which the agreement was made, were warranted by the assured, to wit, the said Maris Rhoads, to be true in all respects, and that if the said policy had been obtained by or through any fraud, misrepresentation, or concealment the said last-mentioned policy should be absolutely null and void. And the defendants in fact say that in the said application for insurance, so made as aforesaid part of the said last-mentioned policy of insurance, it was thereby declared that the party—meaning thereby the said Maris Rhoads, the plaintiff's intestate—is now, to wit, at the time of the making of the said application, in good health, of sound body and mind, and does ordinarily enjoy good health. And the defendants say that the said declaration was false and untrue, and that the said Maris Rhoads was not, at the time of the making of the said application and of the
46 making and issuing of the said last-mentioned policy of insurance based thereon, in good health, of sound body and mind, and that he did not ordinarily enjoy good health; wherefore the defendants say that the said last-mentioned policy of insurance became and was absolutely null and void. And this the defendants are ready to verify.

15. Non-assumpserunt.

16. Tender.

17. Accord and satisfaction.

SAMUEL C. PERKINS,
Def'ts' Att'y.

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Cl'k C. C. U. S.

47 (Endorsed:) 43. April sess, 1881. C. C. U. S., E. D. of Pa. Rhoads, adm'x, *vs.* Continental Life Ins. Co. Defendants' pleas to 1st and 2d counts of plaintiff's declaration filed March 1, 1882. Filed April 27, 1882. S. C. Perkins.

48 And afterwards, to wit, on the 12th day of August, A. D. 1882, the plaintiff, by her attorneys, comes into our said court here and files her replication as follows, to wit:

49 *Replication.*

1. And the plaintiff as to the first plea of said defendant saith: That the answer "None" of Maris Rhoads, the plaintiff's intestate, to qustion 15 in the application for the insurance mentioned in the first count of the plaintiff's declaration, which question was, "Has the party whose life is proposed to be insured ever had any of the following diseases, to wit (*inter alia*), insanity?" was not false and untrue, and the said Maris Rhoads, the plaintiff's intestate, had not theretofore had the disease insanity, and was not insane at the time the policy of insurance was issued in manner and form as the defendant hath in and by its said plea in that behalf alleged. And this the plaintiff prays may be inquired of by the country.

2. And the plaintiff, as to the second plea of the said defendant, saith: That the answer "None" of Maris Rhoads, the plaintiff's intestate, to question 15 in the application for the insurance mentioned in the second count of the plaintiff's declaration, which question was, "Has the party whose life is proposed to be insured ever had any of the following diseases, to wit (*inter alia*), insanity?" was not false and untrue, and the said Maris Rhoads, the plaintiff's intestate, had not theretofore had the disease insanity, and was not insane at the time when the policy of insurance was issued in the manner and form as the defendant hath in and by his said plea in that behalf alleged. And this the plaintiff prays may be inquired of by the country.

50 3. And the plaintiff, as to the third plea of the defendant, saith: That the answer "Yes" of Maris Rhoads, the plaintiff's intestate, to question 11 in the application for the insurance in the first count of the plaintiff's declaration mentioned, which question was, "Is the party whose life is proposed to be insured now in good health and free from any disorder, infirmity, or weakness?" was not false and untrue, and the said Maris Rhoads, at the time when the said application was made and the policy of insurance was issued, was not insane in manner and form as the defendant hath in and by his said plea in that behalf alleged. And this the plaintiff prays may be inquired of by the country.

4. And the plaintiff, as to the fourth plea of the defendant, saith: That the answer "Yes" of Maris Rhoads, the plaintiff's intestate, to question 11 in the application for the insurance in the second count of the plaintiff's declaration mentioned, which question was, "Is the party whose life was proposed to be insured now in good health and free from any disorder, infirmity, or weakness?" was not false and untrue, and the said Maris Rhoads, at the time when the said application was made and the policy of insurance was issued, was not insane in manner and form as the defendant hath in and by its said plea in that behalf alleged. And this the plaintiff prays may be inquired of by the country.

5. And the plaintiff, as to the fifth plea of the defendant, saith: That the said Maris Rhoads did not die by his own hand in manner and form as the defendant hath in and by its said plea in that behalf alleged. And this the plaintiff prays may be inquired of by the country.

51 6. And the plaintiff, as to the sixth plea of the defendant, saith: That the said Maris Rhoads did not die by his own hand in manner and form as the defendant hath in and by its said plea in that behalf alleged. And this the plaintiff prays may be inquired of by the country.

7. And the plaintiff, as to the seventh plea of the defendant, saith: That the policy of insurance in the first count of the plaintiff's declaration mentioned was not obtained from the defendant by the fraud, covin, and wrongful concealment of certain material information, which ought then to have been communicated to the defendant, and, by the misrepresentation of the said Maris Rhoads, the plaintiff's intestate, in manner and form as the defendant hath in and by its said plea in that behalf alleged. And this the plaintiff prays may be inquired of by the country.

8. And the plaintiff, as to the eighth plea of the defendant, saith: That the policy of insurance in the second count of the plaintiff's declaration mentioned was not obtained from the defendant by the fraud, covin, and wrongful concealment of certain material information, which ought then to have been communicated to the defendant, and by the misrepresentation of the said Maris Rhoads, the plaintiff's intestate, in manner and form as the defendant hath in and by its said plea in that behalf alleged. And this the plaintiff prays may be inquired of by the country.

9. And the plaintiff, as to the ninth plea of the defendant, saith: That the policy of insurance in the first count of the

52 plaintiff's declaration mentioned was not obtained from the defendant by the fraud and misrepresentation of Maris Rhoads, the plaintiff's intestate, as to the health of the said Maris Rhoads at the time of making of the application for said policy, and of the issuing of said policy, and as to the freedom from any disorder, infirmity, and weakness, and as to his diseases with which the said Maris Rhoads had been afflicted, and by the suppression by the said Maris Rhoads of facts in regard to his health, to wit: That the said Maris Rhoads had theretofore, and then still had, the disease of insanity in manner and form as the defendant hath in and by its said plea in that behalf alleged. And this the plaintiff prays may be inquired of by the country.

10. And the plaintiff, as to the tenth plea of the defendant, saith: That the policy of insurance in the second count of the plaintiff's declaration mentioned was not obtained from the defendant by the fraud and misrepresentation of Maris Rhoads, the plaintiff's intestate, to wit, as to the health of the said Maris Rhoads at the time of the making of the application for said policy, and of the issuing of the said policy, and as to his freedom from any disorder, infirmity, and weakness, and as to the diseases with which the said Maris Rhoads had been afflicted, and by the suppression by the said Maris Rhoads of facts in regard to his health, to wit: That the said Maris

Rhoads had theretofore, and then still had, the disease of insanity in manner and form as the defendant hath in and by its said plea in that behalf alleged. And this the plaintiff prays may be inquired of by the country.

53 11. And the plaintiff, as to the eleventh plea of the defendant, saith: That it is not true that certain answers, statements, and declarations of the said Maris Rhoads contained in the said application were, at the time of the making thereof, false and untrue in manner and form as the defendant hath in and by its said plea in that behalf alleged. And this the plaintiff prays may be inquired of by the country.

12. And the plaintiff, as to the twelfth plea of the defendant, saith: That it is not true that certain answers, statements, and declarations of Maris Rhoads contained in the said application were, at the time of the making thereof, false and untrue in manner and form as the defendant hath in and by its said plea in that behalf alleged. And this the plaintiff prays may be inquired of by the country.

13. And the plaintiff, as to the thirteenth plea of the defendant, saith: That the declaration of the said Maris Rhoads, the plaintiff's intestate, in the application for the insurance in the first count of the plaintiff's declaration mentioned, to wit, that the party—meaning the said Maris Rhoads, the plaintiff's intestate—is now, to wit, at the time of the making of said application, in good health, of sound body and mind, and does ordinarily enjoy good health, was not false and untrue, and it is not true that the said Maris Rhoads was not, at the time of making the said application and of the making and issuing of the said last-mentioned policy of insurance, based thereon, in good health, of sound body and mind, and that he did not ordinarily enjoy good health in manner and form as the defendant hath in and by its said plea in that behalf alleged. And this the plaintiff prays may be inquired of by the country.

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14. And the plaintiff, as to the fourteenth plea of the defendant, saith: That the declaration of Maris Rhoads, the plaintiff's intestate, in the application for the policy of insurance, in the second count of the plaintiff's declaration mentioned, to wit, that the party—meaning the said Maris Rhoads, the plaintiff's intestate—is now, to wit, at the time of the making of the said application, in good health, of sound body and mind, and does ordinarily enjoy good health, was not false and untrue, and it is not true that the said Maris Rhoads was not, at the time of the making of the said application and of the making and issuing of the said last-mentioned policy of insurance, based thereon, in good health, of sound body and mind, and that he did not ordinarily enjoy good health in manner and form as the defendant in and by its said plea in that behalf alleged. And this the plaintiff prays may be inquired of by the country.

15. And the plaintiff, as to the defendant's plea of non-assumpsit, saith *similiter et issue.*

16. No tender.

17. No accord and satisfaction.

R. T. CORNWELL,
F. C. HOOTON,
Pl'ff's Att'ys.

55 (Endorsed:) No. 43. April sess., 1881. C. C. U. S., E. D. of Pa. Rhoads, adm'x, &c., *vs.* Continental Life Insurance Company. Replication. Hooton, Cornwell. Filed August 12, 1882.

56 And afterwards, to wit, on the 16th day of August, A. D. 1882, the defendant, by its attorney, comes into our said court here and files its rejoinders and demurrers to plaintiff's declaration as follows, to wit:

C. C. U. S., E. D. of Pa. April sess., 1881.

RHOADS, Adm'x,
vs.
THE CONTINENTAL LIFE INS. CO. } No. 43.

Rejoinders.

And the defendants, as to the third, fourth, fifth, sixth, eleventh, and twelfth pleas of the defendant's, and which the plaintiff hath prayed may be inquired of by the country, do the like.

SAMUEL C. PERKINS,
Defts' Att'y.

Per J. G. B.

57 C. C. U. S., E. D. of Pa.

RHOADS, Administratrix, *vs.* THE CONTINENTAL LIFE INS. CO.

And the defendants say that the replications of the plaintiff to the first, second, seventh, eighth, ninth, tenth, thirteenth, and fourteenth pleas of defendants are not sufficient in law.

First. And the defendants state and show to the court here the following causes of demurrer to the said replication to the said first plea—that is to say, that the said replication is double in this, that the plaintiff hath alleged that the said Maris Rhoads, the plaintiff's intestate, had not theretofore had the disease insanity and was not insane at the time the policy of insurance was issued, and also because the allegation of the plaintiff in the said replication ought to have been laid in the disjunctive and not in the conjunctive, and also that said replication tends to raise an immaterial issue, inasmuch as if the defendants should join issue thereon, and should on the trial prove that the said Maris Rhoads, the plaintiff's intestate, had theretofore had the disease insanity, though not that he was
58 insane at the time the policy of insurance was issued, or the reverse, such issue must be found for the plaintiff, although it would be manifest that the said policy must be void, and, therefore, the plaintiff could have no right to maintain the action.

Second. And the defendants state and show to the court here the following causes of demurrer to the said replication to the said second plea—that is to say, that the said replication is double in this, that the plaintiff hath alleged that the said Maris Rhoads, the plaintiff's intestate, had not theretofore had the disease insanity, and was not insane at the time the policy of insurance was issued, and also because the allegation of the plaintiff in the said replication ought, ris

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to have been laid in the disjunctive and not in the conjunctive, and also that said replication tends to raise an immaterial issue, inasmuch as if the defendants should join issue thereon, and should on the trial prove that the said Maris Rhoads, the plaintiff's intestate, had theretofore had the disease insanity, though not that he was insane at the time the policy of insurance was issued, or the reverse, such issue must be found for the plaintiff, although it would be manifest that the said policy must be void, and therefore the plaintiff could have no right to maintain the action.

59 Third. And the defendants state and show to the court here the following causes of demurrer to the said replication to the said seventh plea—that is to say, that the said replication is—double in this, that the plaintiff hath alleged that the said policy of insurance, in the said seventh plea mentioned, was not obtained by the fraud, covin, and wrongful concealment of certain material information, which ought then to have been communicated to the defendants, and by the misrepresentation of the said Maris Rhoads, the plaintiff's intestate, and also because the allegations of the plaintiff in the said replication ought to have been laid in the disjunctive, and not in the conjunctive, and also that the said replication tends to raise an immaterial issue, inasmuch as if the defendants should join issue thereon, and should on the trial prove that the said policies were obtained by the fraud, covin, and wrongful concealment of the said plaintiff's intestate, though not by his misrepresentation, such issue must be found for the plaintiff, although it would be manifest that the policies must be void, and therefore the plaintiff could have no right to maintain the action.

Fourth. And the defendants state and show to the court here the following cause of demurrer to the said replication to the said

60 eighth plea—that is to say, that the said replication is double in this, that the plaintiff hath alleged that the said policy of insurance in the said eighth plea mentioned was not obtained by the fraud, covin, and wrongful concealment of certain material information, which ought then to have been communicated to the defendants, and by the misrepresentation of the said Maris Rhoads, the plaintiff's intestate, and also because the allegations of the plaintiff in the said replication ought to have been laid in the disjunctive, and not in the conjunctive, and also that the said replication tends to raise an immaterial issue, inasmuch as if the defendants should join issue thereon, and should on the trial prove that the said policies were obtained by the fraud, covin, and wrongful concealment of the said plaintiff's intestate, though not by his misrepresentation, such issue must be found for the plaintiff, although it would be manifest that the policies must be void, and therefore the plaintiff could have no right to maintain the action.

Fifth. And the defendants state and show to the court here the following causes of demurrer to the said replication to the said ninth place—that is to say, that the said replication is double in this, that the said plaintiff hath alleged that the said policy of in-

61 surance, in the said ninth plea mentioned, was not obtained from the defendants by the fraud and misrepresentation of

Maris Rhoads, the plaintiff's intestate, as to the health of the said Maris Rhoads and as to his freedom from any disorder, infirmity, and weakness, and as to the diseases with which the said Maris Rhoads had been afflicted, and by the suppression by the said Maris Rhoads of facts in regard to his health, to wit, that the said Maris Rhoads had theretofore and then still had the disease of insanity, and also because the allegations of the plaintiff in the said replication ought to have been laid in the disjunctive, and not in the conjunctive, both as respects the two principal branches of the plea, to wit, first, fraud and misrepresentation; and second, suppression of marial facts, and as respects the subdivisions of said principal branches, teand also that the said replication tends to raise an immaterial issue, inasmuch as if the defendants should join issue thereon and should, on the trial, prove that the said policies were obtained by the fraud and misrepresentation of the said plaintiff's intestate as to either one of the subdivisions of said principal branch of said plea, though not as to any of the others, and though not by the suppression by the said plaintiff's intestate of either one of the facts alleged to be suppressed, to wit, the previous insanity of said plaintiff's in-
62 testate and his insanity at the time of the making of said application and of the issuing of said policy, such issue must be found for the plaintiff, although it would be manifest that the policy must be void, and therefore the plaintiff could have no right to maintain the action.

Sixth. And the defendants state and show to the court here the following causes of demurrer to the said replication to the said tenth plea—that is to say, that the said replication is double in this, that the said plaintiff hath alleged that the said policy of insurance in the said tenth plea mentioned was not obtained from the defendants by the fraud and misrepresentation of Maris Rhoads, the plaintiff's intestate, as to the health of the said Maris Rhoads and as to his freedom from any disorder, infirmity, and weakness, and as to the diseases with which the said Maris Rhoads had been afflicted, and by the suppression by the said Maris Rhoads of facts in regard to his health, to wit, that the said Maris Roads had theretofore and then still had the disease of insanity, and also because the allegations of the plaintiff in the said replication ought to have been laid in the disjunctive, and not in the conjunctive, both as respects the two principal branches of the plea, to wit, first, fraud and misrepresentation; and second, suppression of material facts and as re-
spects the subdivisions of said principal branches, and also
63 that the said replication tends to raise an immaterial issue, inasmuch as if the defendant should join issue thereon and should, on the trial, prove that the said policies were obtained by the fraud and misrepresentation of the said plaintiff's intestate as to either one of the subdivisions of said principal branch of said plea, though not as to any of the others, and though not by the suppression by the said plaintiff's intestate of either one of the facts alleged to be suppressed, to wit, the previous insanity of said plaintiff's intestate and his insanity at the time of the making of said application and of the issuing of said policy, such issue must be

found for the plaintiff, although it would be manifest that the policy must be void, and therefore the plaintiff could have no right to maintain the action.

Seventh. And the defendants state and show to the court here the following causes of demurrer to the said replication to the said thirteenth plea—that is to say, that the said replication is double in this, that the plaintiff hath alleged that it is not true that the said Maris Rhoads was not, at the time of the said making of the said application and of the making and issuing of the said policy of insurance in the said plea mentioned, in good health, of sound body and mind, and that he did not ordinarily enjoy good health, and
64 also because the allegations of the plaintiff in the said replication ought to have been laid in the disjunctive and not in the conjunctive, and also that the said replication tends to raise an immaterial issue, inasmuch as if the defendants should join issue thereon, and should on the trial prove that the said Maris Rhoads was not, at the time of the making of said application and of the making and of the issuing of the said policy of insurance, in good health, of sound body and mind, but not that he did not ordinarily enjoy good health, or should prove that the said Maris Rhoads did not ordinarily enjoy good health, but not that he was not, at the time of the making of said application and of the making and issuing of the said last-mentioned policy of insurance, in good health, of sound body and mind, such issue must be found for the plaintiff, although it would be manifest that the policies must be void, and therefore the plaintiff could have no right to maintain the action.

Eighth. And the defendants state and show to the court here the following causes of demurrer to the said replication to the said fourteenth plea—that is to say, that the said replication is double in this, that the said plaintiff hath alleged that it is not true that the said Maris Rhoads was not, at the time of the said making of the said application and of the making and issuing of
65 the said policy of insurance in the said plea mentioned, in good health, of sound body and mind, and that he did not ordinarily enjoy good health, and also because the allegations of the plaintiff in the said replication ought to have been laid in the disjunctive and not in the conjunctive, and also that the said replication tends to raise an immaterial issue, inasmuch as if the defendants should join issue thereon, and should on the trial prove that the said Maris Rhoads was not, at the time of the making of said application and of the making and issuing of the said policy of insurance, in good health, of sound body and mind, but not that he did not ordinarily enjoy good health, or should prove that the said Maris Rhoads did not ordinarily enjoy good health, but not that he was not, at the time of the making of said application and of the making and issuing of the said last-mentioned policy of insurance, in good health, of sound body and mind, such issue must be found for the plaintiff, although it would be manifest that the policies must be void, and, therefore, the plaintiff could have no right to maintain the action.

SAM'L C. PERKINS,
Att'y for Def'ts.

66 (Endorsed:) 43. April sess., 1881. C. C. U. S., E. D. of Pa. Ann Eliza Rhoads, adm'x, *vs.* The Continental Life Ins. Company of Hartford, Conn. Defendant's rejoinders and demurrers to replications of plaintiff to defendants' pleas. Filed Aug. 16, 1882. S. C. Perkins.

67 And afterwards, to wit, on the 25th day of August, A. D. the plaintiff, by her attorneys, comes into our said court here and files her joinder in demurrer, as follows, to wit:

Joinder in Demurrer to Replication.

In C. C. U. S., E. D. of Pa. Apr. Sess., 1881.

RHOADS, Adm'r'x, &c., *vs.* CONTINENTAL LIFE INS. CO. } No. 43.

And the plaintiff says that the replications to the first, second, seventh, eighth, ninth, tenth, thirteenth, and fourteenth pleas of the defendant are sufficient in law.

F. C. HOOTON,
R. T. CORNWELL,
Pl'ff's Att'ys.

(Endorsed:) No. 43. April sess., 1881. Rhoads, adm'r'x, &c., *vs.* Continental Life Ins. Company. Joinder in demurrer to replication. Hooton, Cornwell. Filed August 25, 1882.

68 And afterwards, to wit, on the 12th day of October, A. D. 1882, this cause coming on to be heard upon demurrer, and was argued by counsel for the respective parties, whereupon the court ordered the demurrer to be overruled.

69 And afterwards, to wit, on the 14th day of October, A. D. 1882, the defendant, by its attorney, comes into our said court here and files its rejoinders, as follows, to wit:

Rejoinders.

C. C. U. S., E. D. of Pa. April Sess., 1881.

RHOADS, Adm'r'x, *vs.* THE CONTINENTAL LIFE INS. CO } No. 43.

And the defendants, by leave of the court first had and obtained as to the replications to 1st, 2nd, 7th, 8th, 9th, 10th, 13th, and 14th pleas of the defendants, and which the plaintiffs hath prayed may be inquired of by the country, do the like.

SAM'L C. PERKINS,
Def'ts' Att'y.

(Endorsed:) No. 43. April sess., 1881. C. C. U. S., E. D. of Pa. Rhoads, adm'r'x, *vs.* The Continental Life Ins. Co. Rejoinders. Filed October 14, 1882. S. C. Perkins.

70 And afterwards, to wit, on the 2nd day of April, A. D. 1883, the defendant-, by *its* attorney, comes into our said court, and, leave having been first had and obtained, files additional pleas, as follows, to wit:

71 C. C. U. S., E. D. of Pa. April Sess., 1881.

RHOADS, Adm'x,
vs.
CONTINENTAL LIFE INS. CO. OF HARTFORD, CONN. } No. 43.

The defendant-, by Samuel G. Perkins, their attorney, under leave of the court in that behalf first had and obtained, file the following pleas:

18. As to the first count of plaintiff's declaration, that the policy of insurance issued by defendants on the life of plaintiff's intestate, and therein mentioned and set forth, was issued by the defendants and accepted by the plaintiff's intestate upon, *inter alia*, the following express condition and agreement, to wit: That in case the said insured (meaning thereby the said Maris Rhoads, the plaintiff's intestate) should become so far addicted to any habit as to impair the health seriously said policy shall be absolutely null and void. And the defendants say that the said Maris Rhoads, long before his death, had become so far addicted to the habit of not taking sufficient nourishment to sustain life as to impair his health seriously, insomuch that in truth and in fact he died of inanition.

Wherefore defendants say that said policy of insurance became and was absolutely null and void in law. And this defendants are ready to verify.

19. As to the second count of plaintiff's declaration, that the policy of insurance issued by defendants on the life of plaintiff's
72 intestate, and therein mentioned and set forth, was issued by the defendants and accepted by the plaintiff's intestate upon, *inter alia*, the following express condition and agreement, to wit: That in case the said insured (meaning thereby the said Maris Rhoads, the plaintiff's intestate) should become so far addicted to any habit as to impair the health seriously said policy shall be absolutely null and void. And the defendants say that the said Maris Rhoads long before his death had become so far addicted to the habit of not taking sufficient nourishment to sustain life as to impair his health seriously, insomuch that in truth and in fact he died of inanition.

Wherefore defendants say that said policy of insurance became and was absolutely null and void in law. And this defendants are ready to verify.

SAM'L C. PERKINS,
Att'y for Defts.

73 (Endorsed:) 43. April sess., 1881. C. C. U. S., E. D. of Pa. Rhoads *vs.* Continental Life Ins. Co. Defendants' additional pleas. Filed April 2, 1883. S. C. Perkins.

74 And afterwards, to wit, on the 3rd day of April, A. D. 1883, the plaintiff, by her attorneys, appear- in open court and move- the court to strike off the additional pleas of defendant, and the said motion having been argued by the counsel for the respective parties the court order the additional plea of defendant- to be stricken off; whereupon the counsel for the defendant- excepts.

And thereupon it is ordered that a jury come to try the issue joined in this cause.

And on the day and year last aforesaid came the parties aforesaid, and the jurors of the jury aforesaid being called likewise came, to wit:

1. Thomas Ashmead.
2. Frederick Collins.
3. George Evans.
4. Augustus L. Rube.
5. Thomas A. Boyd.
6. Joseph Le Bar.
7. Moses Anderson.
8. Theodore Frothingham.
9. George W. Burton.
10. Dennis Bauman.
11. James Nichol.
12. Jacob Seitz.

Who are duly empanelled, returned chosen, tried, and sworn or affirmed to speak the truth in the issue joined, &c.

75 And on the day and year last aforesaid the jurors aforesaid, upon their oaths or affirmations aforesaid, respectively do say that they find for the plaintiff, and assess the damages at five thousand five hundred and sixty eight $\frac{66}{100}$ dollars ($5,568.66).

And thereupon, for as much as the court here is not as yet advised about giving judgment of and upon the premises, day is therefore given to the said parties to be before the court in four days, to wit, on the 7th day of April, in the year aforesaid, for hearing judgment of and upon the premises, because the said court here is not yet advised thereupon.

At which day, to wit, the 7th day of April, A. D. 1883, before the judges of said court, comes the said Ann Eliza Rhoads, administratrix, &c., by her attorneys aforesaid, whereupon the premises being seen and fully understood by the court here, and mature deliberation being had thereon, its considered that the said Ann Eliza Rhoads, administratrix, do recover from the said The Con-
67 tinental Life Insurance Company of *of* Hartford, Connecticut, her damages aforesaid found by the said jurors in form aforesaid, to wit, five thousand five hundred and sixty-eight $\frac{66}{100}$ dollars ($5,568.66), and also adjudged to the said Ann Eliza Rhoads by the court here at her request for her said costs and charges, which said damages in the whole amount to the sum of ———.

And afterwards, to wit, on the 2nd day of June, A. D. 1883, the defendant-, by *its* attorney, file the following bill of exceptions, to wit:

77 *Bill of Exceptions.*

Be it remembered that in the April sessions, No. 43, A. D. 1881, came Ann Eliza Rhoads, administratrix of Maris Rhoads, late a citi-

zen of the State of Pennsylvania, deceased, into the circuit court of the United States for the eastern district of Pennsylvania, and impleaded The Continental Life Insurance Company of Hartford, Connecticut, a foreign corporation, incorporated by the laws of the State of Connecticut, and a citizen thereof, in a certain plea of trespass on the case, &c., in which the said plaintiff declared (prout narr.), and the said defendants pleaded (prout pleas). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the district aforesaid, before the Honorable William McKennan, circuit judge of the said court, on Tuesday, the third day of April, A. D. 1883, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly impannelled (prout list of jurors), at which day came as well the said plaintiff as the said defendant by their respective attorneys; and the jurors of the jury aforesaid impannelled to try the said issues being also called came and were then and there in due manner chosen and sworn or affirmed to try the said issue; and upon the trial the counsel
78 of the said plaintiff put in evidence two policies of insurance made and executed by the defendants under the hand of their president, attested by their secretary, each dated Hartford, Connecticut, August 29th, 1877, No. 1832, in the sum of $2,000, and No. 26229 in the sum of $3,000, upon the life of Maris Rhoads for his own benefit. (Prout copies of the same hereto annexed marked Exhibits A. and B).

Also the applications produced by the defendants on call, signed by Maris Rhoads, dated Springfield, August 21st, 1877, upon which the policies were issued (prout copies of the same hereto annexed, marked Exhibits C and D).

Also receipts for the premiums on said policies paid the company from the time of the issuing of the policies to November 29th, 1880, inclusive (prout copies of the same hereto annexed, marked Exhibits E and F).

And called Morton Chase, who testified that the insured died December 2d, 1880, in bed, at his home, in Springfield township, Delaware county, Pennsylvania; that he was buried about four days after his death.

Witness also testified that March 29th, 1883, he had subpœnaed Dr. Samuel Bartleson, the attending physician of the insured at the time of his death, but that he was confined to his house with three of his ribs broken by a recent accident, and that Mr. Rigby, the undertaker at the burial of the insured, is now deceased.

Plaintiff then put in evidence the proofs of death produced by defendants on call (prout copy of the same marked Exhibit G).

It was admitted that the blanks for the proofs of death were sent by Mr. Aller, the agent in Philadelphia of the company defendant, to F. C. Hooton, Esq., plaintiff's attorney, December 11th,
79 1880, and the proofs of death were sent by Mr. Hooton to Mr. Aller, February 22nd, 1881, and that he forwarded them

to the company at Hartford, Connecticut, February 23rd, 1881, and that they were duly received by the company.

Plaintiff then put in evidence letter from Mr. Hooton to R. E. Beecher, secretary of the company defendant, produced by defendants on call, dated May 28th, 1881, and the answer of Mr. Beecher, dated June 1st, 1881 (prout copies of the same marked Exhibits H and I).

Plaintiffs then closed.

Defendants' counsel then moved for a nonsuit, upon the ground that the policies both contain these conditions: "That in case the said insured shall die by his own hand, either sane or insane, * * * then this policy shall be null, void, and of no effect." And provided "That in every case where this policy shall cease, or be or become null and void, all payments thereon shall be forfeited to said company, except that, if the said insured shall die by his own hand during the continuance of this policy, all premiums that shall have been received by said company hereon shall be returned to the said assured."

The court thereupon refused the motion for a nonsuit; to which ruling the defendants then and there excepted, and this first bill of exceptions is sealed.

Defendants then offered in evidence copy of the plaintiff's bill of particulars (original withdrawn by leave of the court March 1, 1882), dated July 1st, 1881, signed by F. C. Hooton, Esq., attorney for the plaintiff, and furnished to defendants' attorney about the middle of the same month (prout copy of the same marked Exhibit J),
80 as showing an admission on the part of the plaintiff that the insured, at the time the policies were taken out, was not of such sound mind as would enable him to make a contract, and that he continued insane until the day of his death.

Which offer was objected to by the plaintiff and overruled by the court; to which ruling the defendants then and there excepted, and this second bill of exceptions is sealed.

Defendants then offered in evidence the certificate of the attending physician annexed to the proofs of death (prout copy of the same Exhibit G No. 2), furnished by the plaintiff to the company defendant under the requirements of the policy, to show the cause of the death, said certificate containing the following: "11. State the disease of which deceased died and any important facts connected therewith. Was it complicated by any other disease? If so, by what disease, and for how long? Was a post-mortem examination made, by whom, and with what results?" "Ans. The patient became insane (melancholia), and refused to take sufficient nourishment and died of inanition. No."

To the admission in evidence of which certificate plaintiff objected as incompetent.

The court thereupon overruled the offer; to which ruling the defendants then and there excepted, and this third bill of exceptions is sealed.

Defendants then closed.

81 The court then charged the jury as follows:

McKENNAN, *C. J.:*

This is an action brought by Ann Rhoads, administratrix of Maris Rhoads, against the Continental Life Insurance Company of Hartford, Connecticut, to recover the amounts of two policies of insurance upon the life of the decedent, dated August 29th, 1877, and which were to remain in force down to the time of his death, upon condition that the amounts of premiums stated in the policies were paid at the times when they were required to be paid by the terms of the policies.

It is shown by the receipts of the defendants that these payments were made down to the 29th of November, 1880, inclusive, and that Mr. Rhoads died in December following, before any other payment became due.

It is further shown that a short time after Mr. Rhoads' death proofs of loss, which were required by the rules of the company, were furnished to the company.

This is enough to entitle the plaintiff to recover the amounts of the policies, unless something has been shown by the defendants as a reason why they should not meet this liability. There is no evidence, as the court regards it, against the sufficient proof of the plaintiff's right to recover. If you believe, therefore, the evidence offered by the plaintiff—and there is no reason why you should not—the plaintiff is entitled to recover the amounts of these two policies, with interest, from the time fixed—ninety days after the date when the proofs of loss were furnished.

We are requested by the defendant's counsel to instruct you on the following points:

82 1st. That it appearing from Ans. 11 in the certificate of the attending physician, which is attached to and forms part of the proofs of death furnished by the pl'ff under the requirements of the policy, to wit: "11. State the disease of which deceased died and any important facts connected therewith. Was it complicated by any other disease? If so, by what disease and for how long? Was a post-mortem examination made, by whom, and with what results?" "Ans. The patient became insane (melanchoila) and refused to take sufficient nourishment and died of inanition. No"—that the insured died by his own hand insane, the plaintiff can at most only recover the amount of the premiums paid upon the policies in suit, as stated in the letter of the secretary of the company dated June 1st, 1881, to Col. F. C. Hooton.

That point is answered as follows: The certificate of the physician was offered and admitted in evidence as an essential part of the proof of death required by the rules of the defendants to be furnished by the representatives of the insured. It is to be considered

only as evidence that the plaintiff has complied with this requirement and is entitled to maintain her suit in so far as compliance with it may so entitle her, and not as an admission by the plaintiff of the truth of the physician's statement as to the cause of death or of the mental condition of the insured at that time.

The point is therefore refused.

It is for you, therefore, in the view that the court take of the physician's certificate to say that there is no evidence that all the conditions imposed by these policies were not complied with.

83 Also, 2d. That if the jury find for the plaintiffs the defendants are entitled to have the premiums for the two quarters constituting the balance of the year ending Aug. 29, 1881, deducted from the amounts insured.

This point is refused.

We do not take the view of the contract which he does. We are of opinion that the plaintiff was not bound to pay, and, therefore, is not subject to a deduction of any portion of the premiums which accrued after his death. It is, however, true that by the terms of the original policy the premiums were for a year in advance, and the policy was upon the payment of a year's premium extended to the end of that year. As it appears by the receipts of the company for premiums paid, a change was made by which the annual premiums were made quarterly premiums, and at the beginning of each quarter the insured might pay, and the company would receive, a quarter's premium in advance, and the policy was extended to the end of the quarter covered by the premiums so paid.

So that we are of opinion that the insured here did all that he was required to do by his contract to keep this policy alive, and that the plaintiff is entitled to recover the amount.

Counsel will submit a calculation to you.

84 And thereupon the counsel for defendants did then and there except to the aforesaid charge of the court, as follows:

1. There was error in refusing defendants' first point. "That it appearing from Ans. 11 in the certificate of the attending physician, which is attached to and forms part of the proofs of death furnished by the pl'ff under the requirements of the policy, to wit: '11. State the disease of which deceased died and any important facts connected therewith. Was it complicated by any other disease. If so, by what disease and for how long? Was a post-mortem examination made, by whom, and with what results?' 'Ans. The patient became insane (melancholia), and refused to take sufficient nourishment and died of inanition. No'—that the insured died by his own hand, insane, the plaintiff can at most only recover the amount of the premiums paid upon the policies in suit as stated in the letter of the secretary of the company, dated June 1st, 1881, to Col. F. C. Hooton."

2. There was error in charging the jury, in answer to defendants' first point, that "The certificate of the physician was offered and admitted in evidence as an essential part of the proof of death required by the rules of the defendants to be furnished by the repre-

sentatives of the insured. It is to be cousidered only as evidence that the plaintiff has complied with this requirement, and is entitled to maintain her suit in so far as compliance with it may so entitle her, and not as an admission by the plaintiff of the truth of the physician's statement as to the cause of death, or of the mental condition of the insured at that time."

85 3. There was error in refusing defendants' second point, "That if the jury find for the plaintiffs the defendants are entitled to have the premiums for the two quarters constituting the balance of the year ending Aug. 29, 1881, deducted from the amounts insured."

4. There was error in charging the jury, in answer to defendants' second point, "We do not take the view of the contract which he does. We are of opinion that the plaintiff was not bound to pay, and therefore is not subject to a deduction of any portion of the premiums which accrued after his death. It is, however, true that by the terms of the original policy the premiums were for a year in advance, and the policy was upon the payment of a year's premium extended to the end of that year. As it appears by the receipts of the company for premiums paid a change was made by which the annual premiums were made quarterly premiums, and at the beginning of each quarter the insured might pay, and the company would receive, a quarter's premium in advance, and the policy was extended to the end of the quarter covered by the premiums so paid. So that we are of opinion that the insured here did all that he was required to do by his contract to keep this policy alive, and that the plaintiff is entitled to recover the amount."

86 And inasmuch as the said charge and opinion, so excepted to, do not appear upon the record the said counsel for the said defendants did then and there tender this bill of exceptions to the charge and opinion of the said court, and requested the seal of the judge aforesaid should be put to the same according to the form of the statute in such case made and provided. And thereupon the aforesaid judge at the request of the said counsel for the defendants did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 19th day of April, A. D. 1883.

NOTE.—Verdict for plaintiff, $5,568\frac{66}{100}$.

W. McKENNAN, [L. S.]
Cir. Judge.

87 EXHIBIT A.

Copy.

No. 1832. $------

Continental Life Insurance Company of Hartford, Conn.

Non-forfeiture life policy.

This policy of insurance witnesseth that the Continental Life Insurance Company, in consideration of the representations made to them in the application for this policy, and of the annual premium of

one hundred fourteen $\frac{52}{100}$ dollars,* to be paid to said company on or before the 29th day of August in each and every year during the continuance of this policy, do insure the life of Maris Rhoads (hereinafter called the insured), of Springfield, in the county of Delaware, State of Pennsylvania, for the benefit of Maris Rhoads aforesaid (hereinafter called the assured), in the sum of two thousand dollars, for the term of his life; the said sum insured to be paid, at the office of said company, in Hartford, Conn., within ninety days after due notice and satisfactory evidence of the death of the said insured during the continuance of this policy, and of the just claim of the assured (or proof of interest, if assigned or held as security) under this policy, deducting therefrom all indebtedness to the said company on account of this policy, if any, then existing.

Without profits.

Annual premium.

$114.52.

Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is granted by the company and accepted by the assured upon the following express conditions and agreements:

* Payable.

$114.52 cash each 12 months, from Aug. 29, 1877.

First. That in case the said insured shall, without the consent of this company previously obtained, in writing, pass beyond the settled limits of the United States (excepting, in time of peace and general heath, into the settled portions of the British provinces of the two Canadas, Nova Scotia, and New Brunswick, or, by the usual routes and means of public conveyance, to those portions of Europe lying north of the forty-second parallel of north latitude and west of the fortieth meridian of longitude east from Greenwich, or by railroad to California); or shall, without such previous consent, visit, between the first day of July and the first day of November, those parts of the United States which lie south of the thirty-second parallel of north latitude, or south of the parallel of thirty-six degrees and thirty minutes of north latitude, within twenty-five miles of the Mississippi river or one hundred miles of the Atlantic coast; or shall, without such previous consent, pass to or west of the Rocky Mountains (except by railroad to California); or shall enter upon a voyage upon the high seas (except as a passenger, by the usual routes and means of public conveyance, between any Atlantic ports in the United States within the beforementioned limits, or between such last-mentioned ports and any Atlantic port in Europe lying north of the forty-second parallel of north latitude); or, as a mariner, engineer, fireman, conductor, brakeman, or employé in any capacity, enter upon service on any sea, sound, inlet, river, lake, or railroad, or enter into any military or naval service whatsoever (the militia not in actual service excepted); or shall, without such previous consent, be personally employed in the manufacture or transportation of gunpowder or fire-works, or of highly inflammable or explosive sub-

Term.

Life.

stances, or in submarine operations, mining, or blasting; or shall become so far intemperate or addicted to any vice or habit as to impair the health seriously or permanently, or induce delirium tremens; or shall be convicted of felony; or shall die by his own hand, either sane or insane, or by the hands of justice, or in, or in consequence of, a duel, or of the violation of any law of the several States, or of the United States, or of any government within whose limits he may come—then this policy shall be null, void, and of no effect.

Second. That the answers, statements, and declarations contained in, or indorsed upon, the application for this insurance, which application is hereby referred to and made part and parcel of this contract, as if fully herein recited, and upon the faith of which this agreement is made, are warranted by the assured to be true in all respects, and that if this policy has been obtained by or through any fraud, misrepresentation, or concealment, said policy shall be absolutely null and void.

Sum insured.

$2,000.

Third. That this policy shall not take effect, nor become binding on the company, until the advance premium hereon shall have been actually paid during the lifetime of the insured; and no premium on this policy shall be considered as paid unless a receipt shall be given therefor, signed by the president or secretary of the company; and that if the said assured shall not pay the said annual premiums on or before noon of the several days hereinbefore mentioned for the payment of the same, or shall not pay, at maturity, any notes or obligations given for the cash portion of any premium, or part thereof, then, and in every such case, this policy shall cease and determine, and said company shall not be liable for the payment of the sum insured, or any part thereof, except as hereinafter provided.

Fourth. That if, after the receipt by this company of three or more annual premiums upon this policy, default shall be made in the payment of any subsequent premium when due, then, notwithstanding such default, this company will convert this policy into a paid-up policy, agreeably to the table of paid-up insurance given upon the back of this policy: Provided, That this policy shall be transmitted to and received by this company, and application made for such conversion, within one year after such default.

Fifth. That in every case where this policy shall cease, or be or become null and void, all payments thereon shall be forfeited to said company, except that if the said insured shall die by his own hand, during the continuance of this policy, all premiums that shall have been received by said company hereon shall be returned to the said assured; and that, if assigned, the original instrument, or an attested copy thereof, shall be sent to said company for record and acknowledgment.

Sixth. That this policy may be withdrawn and cancelled by the company at any time while in transit, or while in the hands of the agent, and previous to payment of the premium.

[On margin.]

Seventh. That no claim shall exist under this policy unless due notice and satisfactory proof of death shall be presented, in writing, to the officers of said company at the home office, in Hartford, Conn., within two years after the death of the person whose life is hereby insured, and that the time within which any suit shall be brought against said company, on any claim under this policy, is hereby limited to two years from the time when the right of action accrues.

In witness whereof the said Continental Life Insurance Company have, by their president and secretary, signed and delivered this contract, in the city of Hartford, this twenty-ninth day of August, one thousand eight hundred and eighty-one.

(Signed) J. S. PARSONS, *President.*
(Signed) ROBERT E. BEECHER, *Secretary.*

Life of another.

Agents of the company are not authorized to make, alter, or discharge contracts, to waive forfeiture of policies, or to receive premiums when overdue.

88 *Proofs of Death Required.*

First. A certificate from the physician who attended the party during his last sickness, stating particularly the nature of the disease, its duration, and the time of death.

Second. A certificate of a disinterested acquaintance of the deceased, certifying to the time and fact of his death, and that he or she was the person insured by that name in this company.

Third. A certificate from the undertaker or sexton and clergyman who officiated at the funeral of the deceased, and saw the body interred.

Fourth. A certificate from some intimate friend of the deceased respecting his age and the continuance of his temperate habits up to the time of death.

These several certificates should be sworn to before a magistrate or other officer qualified to administer an oath or affirmation; also a certificate from the secretary of state or clerk of court that the magistrate who administered the oath or affirmation is duly authorized to do so.

In case of death immediate notice should be given to the company, either direct or through the nearest agent, and the number and date of the policy stated.

The premiums on this policy are payable at the office of the company in Hartford, Conn.; but, if paid to an agent, the insured will please take notice that no receipt for the premiums on this policy is valid unless signed by the president or secretary of the company, and countersigned by the agent named therein, on or before the date when said premium is due, and the date of the counter-signature must be that on which the premium is actually paid.

Renewals, when the premium has not been promptly paid, are at the option of the company, and should be applied for at the

home office; such application to be accompanied with satisfactory evidence of good health.

This policy does not take effect or become binding until the first premium has been actually paid.

The person insured by this policy has permission to travel, by the usual routes and means of public conveyance, and reside in any settled parts of the United States and Canadas, except west of the Rocky Mountains and except south of the thirty-second parallel of latitude, or south of the parallel of thirty-six degrees and thirty minutes, within twenty-five miles of the Mississippi river or one hundred miles from the Atlantic coast, between July 1 and November 1. He has also permission to pass by railroad to, and reside in, California, to pass as a passenger to Europe, and travel or reside in those parts of the eastern hemisphere lying north of the parallel of forty-two degrees of north latitude and west of the fortieth meridian of east longitude.

Permits for travel or residence beyond these limits, or for prohibited occupations, must be applied for at the home office.

[Endorsed:] Copy. Non-forfeiture life policy. Stock. No. 1832. Continental Life Insurance Company, of Hartford, Conn. Assurance on the life of Maris Rhoads. Age, 59; amount, $2,000; date, Aug. 29, 1877; term of life, —; annual premium, $114.52; extra do., $———. Jos. G. Cummins, agent. Register I, page —.

The Continental.

Paid-Up Insurance upon Table G, Annual Life.

The following table shows the amount, per $1,000 original insurance, for which a paid-up policy will be granted after from three to ten annual premiums have been paid upon the annual life non-participating plan:

Age.	3	4	5	6	7	8	9	10
	Prems.	*Prems.*	*Prems.*	*Prems.*	*Prems.*	*Prems.*	*Prems.*	*Prems.*
15	$42	$61	$81	$104	$127	$152	$178	$207
16	43	62	83	106	129	155	182	211
17	44	63	85	108	131	158	185	215
18	45	65	87	110	134	161	189	219
19	46	66	88	112	137	164	192	223
20	47	67	90	115	139	167	196	227
21	48	69	92	117	142	170	200	232
22	49	70	94	119	145	173	203	236
23	50	71	96	122	147	176	207	240
24	51	73	98	124	150	180	211	244
25	52	74	100	126	153	183	214	248
26	53	76	101	129	156	186	218	253
27	54	77	103	131	159	190	222	257
28	55	79	105	134	162	193	226	262
29	56	80	107	136	165	196	230	267
30	57	82	109	139	168	200	235	272
31	58	83	111	141	171	204	239	277
32	60	85	113	144	174	208	244	282
33	61	87	116	147	178	212	248	287
34	62	89	118	150	181	216	253	293
35	63	91	120	153	185	221	258	298
36	65	93	123	156	189	225	263	304
37	66	95	126	160	193	230	268	309
38	68	97	129	163	197	234	273	314
39	69	99	131	167	201	238	278	319
40	71	101	134	170	204	242	282	324
41	73	103	137	173	208	246	286	329
42	74	105	139	176	211	250	290	333
43	76	107	141	178	214	253	294	337
44	77	109	143	181	217	256	298	341
45	78	110	145	183	219	259	301	345
46	79	111	147	185	222	262	304	348
47	80	113	149	187	224	265	307	352
48	81	114	150	189	226	268	310	356
49	82	115	152	191	229	271	314	360
50	83	117	154	194	232	274	317	363
51	84	118	156	196	234	277	320	367
52	85	120	157	198	237	280	324	370
53	86	121	159	200	240	283	327	374
54	87	122	161	203	242	286	330	378
55	88	124	163	205	245	288	334	381
56	89	125	165	207	247	291	337	384
57	90	127	167	210	250	294	340	388
58	91	128	169	212	252	297	343	391
59	92	130	170	214	255	300	346	394
60	93	131	172	216	257	302	348	397

NOTE.—The amount after any additional payment will be stated upon application to the home office.

89 EXHIBIT B.

Copy.

No. 26229. $3,000.

Continental Life Insurance Company of Hartford, Conn.

Life annual policy.

With profits.

Annual premium.

$219.00.

*Payable.

$219.00 cash.

Each 12 months from Aug. 29th, 1877.

Cash Contribution Plan.

Term.

Life.

Sum insured.

$3,000.

This policy of insurance witnesseth that the Continental Life Insurance Company in consideration of the representations made to them in the application for this policy, and of the annual premium of two hundred and nineteen dollars,* to be paid to said company or or before the twenty-ninth day of August, in each and every year during the continuance of this policy, do insure the life of Maris Rhoads (hereinafter called the insured), of Springfield, in the county of Delaware, State of Pennsylvania, for the benefit of Maris Rhoads aforesaid (hereinafter called the assured), in the sum of three thousand dollars, for the term of his life; the said sum insured to be paid, at the office of said company, in Hartford, Conn., within ninety days after due notice and satisfactory evidence of the death of the said insured during the continuance of the policy, and of the just claim of the assured (or proof of interest, if assigned or held as security), under this policy, deducting therefrom all indebtedness to the said company on account of this policy, if any, then existing.

Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is granted by the company and accepted by the assured upon the following express conditions and agreements:

First. That in case the said insured shall, without the consent of this company previously obtained, in writing, pass beyond the settled limits of the United States (excepting, in time of peace and general health, into the settled portions of the British provinces of the two Canadas, Nova Scotia, and New Brunswick, or, by the usual routes and means of public conveyance, to those portions of Europe lying north of the forty-second parallel of north latitude, and west of the fortieth meridian of longitude east from Greenwich, or by railroad to California); or shall, without such previous consent, visit, between the first day of July and the first day of November, those parts of the United States which lie south of the thirty-second parallel of north latitude, or south of the parallel of thirty-six degrees and thirty minutes of north latitude, within twenty-five miles of the Mississippi river or one hundred miles of the Atlantic coast; or shall, without such previous consent, pass to or west of the Rocky Mountains (except by railroad to California); or shall enter upon a voyage upon the high seas (except as a passenger, by the usual routes and means of public conveyance, between

any Atlantic ports in the United States within the before-mentioned limits, or between such last-mentioned ports and any Atlantic port in Europe lying north of the forty-second parallel of north latitude); or, as a mariner, engineer, fireman, conductor, brakeman, or employé in any capacity, enter upon service on any sea, sound, inlet, river, lake, or railroad, or enter into any military or naval service whatsoever (the militia not in actual service excepted); or shall, without such previous consent, be personally employed in the manufacture or transportation of gunpowder or fire-works, or of highly inflammable or explosive substances, or in submarine operations, mining, or blasting; or shall become so far intemperate or addicted to any vice or habit as to impair the health seriously or permanently, or induce delirium tremens; or shall be convicted of felony; or shall die by his own hand, either sane or insane, or by the hands of justice, or in, or in consequence of, a duel, or of the violation of any law of the several States, or of the United States, or of any government within whose limits he may come—then this policy shall be null, void, and of no effect.

Second. That the answers, statements, and declarations contained in, or indorsed upon, the application for this insurance—which application is hereby referred to and made part and parcel of this contract, as if fully herein recited, and upon the faith of which this agreement is made—are warranted by the assured to be true in all respects, and that, if this policy has been obtained by or through any fraud, misrepresentation, or concealment, said policy shall be absolutely null and void.

Third. That this policy shall not take effect nor become binding on the company until the advance premium hereon shall have been actually paid during the lifetime of the insured; and no premium on this policy shall be considered as paid unless a receipt shall be given therefor, signed by the president or secretary of the company; and that, if the said assured shall not pay the said annual premiums on or before noon of the several days hereinbefore mentioned for the payment of the same, or shall not pay, at maturity, any notes or obligations given for the cash portion of any premium or part thereof—then, and in every such case, this policy shall cease and determine, and said company shall not be liable for the payment of the sum insured, or any part thereof.

Fourth. That in every case where this policy shall cease, or be or become null and void, all payments thereon, and all dividend credits accruing therefrom, shall be forfeited to said company, except that, if the said insured shall die by his own hand during the continuance of this policy, all premiums that shall have been received by said company hereon shall be returned to the said assured; and that, if assigned, the original instrument, or an attested copy thereof, shall be sent to said company for record and acknowledgment.

Fifth. That this policy may be withdrawn and canceled by the company at any time while in transit, or while in the hands of the agent, and previous to payment of the premium.

Sixth. That if, after the recipt by this company of two or more annual premiums upon this policy, default shall be made in the pay-

ment of any subsequent premium when due, then, notwithstanding such default, this company will convert this policy into a non-participating "paid-up" policy for as many dollars as its then present value will purchase as a single net premium: Provided, That this policy shall be transmitted to and received at the home office of this company, and application made for such conversion within one year after such default.

In witness whereof the said Continental Life Insurance Company have, by their president and secretary, signed and delivered this contract in the city of Hartford, this twenty-ninth day of August, one thousand eight hundred and seventy-seven.

(Signed) J. S. PARSONS, *President.*
(Signed) ROBERT E. BEECHER, *Secretary.*

Life of another.

Agents of the company are not authorized to make, alter, or discharge contracts, to waive forfeiture of policies, or to receive premiums when overdue.

90 *Proofs of Death Required.*

First. A certificate from the physician who attended the party during his last sickness, stating particularly the nature of the disease, its duration, and the time of death.

Second. A certificate of a disinterested acquaintance of the deceased, certifying to the time and fact of his death, and that he or she was the person insured by that name in this company.

Third. A certificate from the undertaker or sexton and clergyman who officiated at the funeral of the deceased, and saw the body interred.

Fourth. A certificate from some intimate friend of the deceased, respecting his age and the continuance of his temperate habits up to the time of death.

These several certificates should be sworn to before a magistrate or other officer qualified to administer an oath or affirmation; also a certificate from the secretary of state or clerk of court that the magistrate who administered the oath or affirmation is duly authorized to do so.

In case of death immediate notice should be given to the company, either direct or through the nearest agent, and the number and date of the policy stated.

The premiums on this policy are payable at the office of the company, in Hartford, Conn.; but, if paid to an agent, the insured will please take notice that no receipt for the premiums on this policy is valid unless signed by the president or secretary of the company, and countersigned by the agent named therein, on or before the date when said premium is due; and the date of the counter-signature must be that on which the premium is actually paid.

Renewals, when the premium has not been promptly paid, are at the option of the company, and should be applied for at the home office; such application to be accompanied with satisfactory evidence of good health.

This policy does not take effect or become binding until the first premium has been actually paid.

If this policy is assigned, evidence of such assignment must be sent to the company.

The person insured by this policy has permission to travel, by the usual routes and means of public conveyance, and reside in any settled parts of the United States and Canadas, except west of the Rocky Mountains, and except south of the thirty-second parallel of latitude, or south of the parallel of thirty-six degrees and thirty minutes, within twenty-five miles of the Mississippi river or one hundred miles of the Atlantic coast, between July 1 and November 1. He has also permission to pass by railroad to and reside in California, to pass as a passenger to Europe, and travel or reside in those parts of the eastern hemisphere lying north of the parallel of forty-two degrees of north latitude and west of the fortieth meridian of east longitude.

Permits for travel or residence beyond these limits, or for prohibited occupations, must be applied for at the home office.

[Endorsed:] Copy. Life annual policy. No. 26229. Continental Life Insurance Company of Hartford, Conn. Assurance on the life of Maris Rhoads. Age, 59; amount, $3,000; dated, Aug. 29, 1877; term of life —; annual premium, $219.00; policy, $1—$220. J. G. Cummins, agent. Register B 2, page —.

91 EXHIBIT C.

This was the application upon which policy No. 1832 was issued, & consisted of one of the printed blanks of the insurance company not filled up, except with the name, residence, and occupation of the insured, for whose benefit "self" & "sum to be insured $2.000, premium $114.52, term life, plan, table G," and the following references:

"See appl'n No. 26229."
"For terms of exchange *vide* app'n No. ——."
"For med. ex'm'n see No. 26229."

The paper was endorsed in same form as the application No. 26229, with the necessary variations of detail. It was specified as "Form 31."

94 E, No. 1.

Policy No. 1832.

Annual premium, $114.52.
Cash part of premium, $114.52.
Total cash, 114.52.

Received amount as above this 29th day of Aug., 1877, by Jos. G. Cummins, ag't.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
of Hartford, Conn.
Hartford, Aug. 29, 1877.

Received (as per margin) the first annual payment on policy No. 1832, insuring the life of Maris Rhoads until Aug. 27, 1878; but this receipt shall not be valid nor under said policy binding unless payment is made, as stated in the margin hereof, during the lifetime of the said insured, and this receipt countersigned by J. G. Cummins, agent at Media, Pa.

ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payment of premium, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co., at Hartford, upon actual receipt of the premium.

E, No. 2.

Policy No. 1832.

Annual premium, $114 52.

Received amount as above this 29th day of Aug., 1877, by Jos. G. Cummins, ag't.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
R. form 4. of Hartford, Conn.
Hartford, Aug. 29, 1877.

Received (as per margin) the 2d payment, due Aug. 29, 1878, on policy No. 1832, insuring the life of Maris Rhoads until Aug. 29, 1879; but this receipt shall not be valid unless payment is made, as stated in the margin hereof, at or before noon of the day when due, and this receipt countersigned by J. G. Cummins, agent at Media, Pa.

ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payments, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co., at Hartford, upon actual receipt of payments on or before day when due

E, No. 3.

G.

Policy No. 1832.

Annual premium, $29.78.

Received amount as above this 29th day of Aug., 1879, by Jos. G. Cummins, ag't.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
R. form 4. of Hartford, Conn.
Hartford, Aug. 29, 1879.

Received (as per margin) the 1st q'r, 3d payment, due Aug. 29, 1879, on policy No. 1832, insuring the life of Maris Rhoads until Nov. 29, 1879; but this receipt shall not be valid unless payment is made, as stated in the margin hereof, at or before noon of the day when due, and this receipt countersigned by J. G. Cummins, agent at Media, Pa.

ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payments, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co., at Hartford, upon actual receipt of payments on or before day when due.

95 E, No. 4.

G.

Policy No. 1832.

Annual premium, $29.78.

Received amount as above this 29th day of Nov., 1879, by J. G. Cummins, ag't.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
R. form 4. of Hartford, Conn.
Hartford, Nov. 29, 1879.

Received (as per margin) the 2d q'r, 3d payment, due Nov. 29, 1879, on policy No. 1832, insuring the life of Maris Rhoads until Feb'y 29, 1880; but this receipt shall not be valid unless payment is made, as stated in the margin hereof, at or before noon of the day when due, and this receipt countersigned by J. G. Cummins, agent at Media, Pa.

ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payments, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co , at Hartford, upon actual receipt of payments on or before day when due.

E, No. 5.

G.

Policy No. 1832.

Annual premium, $29.78.

Received amount as above this 28th day of Feb'y, 1880, by H. C. Aller, ag't.

F.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
R. form 4. of Hartford, Conn.
Hartford, Feb'y 29, 1880.

Received (as per margin) the — payment, due Feb'y 29, 1880, on policy No. 1832, insuring the life of Maris Rhoads until May 29, 1880; but this receipt shall not be valid unless payment is made, as stated in the margin hereof, at or before noon of the day when due, and this receipt countersigned by J. G. Cummins, agent at Media, Pa.

ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payments, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co., at Hartford, upon actual receipt of payments on or before day when due.

E, No. 6.

G.

Policy No. 1832.

Annual premium, $29.78.

Received amount as above this 28th day of May, 1880, by H. C Aller, ag't.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
R. form 4. of Hartford, Conn.
Hartford, May 29, 1880.

Received (as per margin) the 4th q'r, 3d payment, due May 29, 1880, on policy No. 1832, insuring the life of Maris Rhoads until Aug. 29, 1880; but this receipt shall not be valid unless payment is made, as stated in the margin hereof, at or before noon of the day when due, and this receipt countersigned by H. C. Aller, agent at Phila., Pa.

ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payments, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co., at Hartford, upon actual receipt of payments on or before day when due.

96 E, No. 7.

G.

Policy No. 1832.

Annual premium, $29.78.

Received amount as above this 23 day of Aug., 1880, by H. C. Aller, ag't.

F.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
R. form 4. of Hartford, Conn.
Hartford, Aug. 29, 1880.

Received (as per margin) the 1st q'r, 4th payment, on policy No. 1832, insuring the life of Maris Rhoads until Nov. 29, 1880; but this receipt shall not be valid unless payment is made, as stated in the margin hereof, at or before noon of the day when due, and this receipt countersigned by H. C. Aller, agent at Phila., Pa.
ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payments, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co., at Hartford, upon actual receipt of payments on or before day when due.

E, No. 8.

G.

Policy No. 1832.

Annual premium, $29.78.

Received amount as above this 29th day of Nov., 1880, by H. C. Aller.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
R. form 4. of Hartford, Conn.
Hartford, Nov , 29, 1880.

Received (as per margin) the 2d q'r, 4th payment on policy No. 1832, insuring the life of Maris Rhoads until Feb'y 28, 1881; but this receipt shall not be valid unless payment is made, as stated in the margin hereof, at or before noon of the day when due, and this receipt countersigned by H. C. Aller, agent at Phila., Pa.
ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payments, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co., at Hartford, upon actual receipt of payments on or before day when due.

F, No. 1.

Policy No. 26229.

Annual premium, $219.00.
Cash part of premium, $219.00.
Total cash, $219.00.

Received amount as above this 29th day of Aug., 1877, by Jos. G. Cummins, ag't.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
R. form 9. of Hartford, Conn.
Hartford, Aug. 29, 1877.

Received (as per margin) the first annual payment on policy No. 26229, insuring the life of Maris Rhoads until Aug. 29, 1878; but this receipt shall not be valid nor render said policy binding unless payment is made, as stated in the margin hereof, during the lifetime of the said insured, and this receipt countersigned by J. G. Cummins, agent at Media, Pa.
ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payment of premiums, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co., at Hartford, upon actual receipt of the premium.

97

F, No. 2.

A.

Policy No. 26229.

Annual premium, $219.00.
Dividend reduction, $22.23.
Am't actually rec'd, $196.77.

Received amount as above this 29th day of Aug., 1878, by Jos. G. Cummins, ag't.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
R. form 9. of Hartford, Conn.
Hartford, Aug. 29, 1878.

Received (as in margin) the 2d payment, due Aug. 29, 1878, on policy No. 26229, insuring the life of Maris Rhoads until Aug. 29, 1879; but this receipt shall not be valid unless payment is made, as stated in the margin hereof, at or before noon of the day when due, and this receipt countersigned by J. G. Cummins, agent at Media, Pa.

ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payments, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co., at Hartford, upon actual receipt of payments on or before day when due.

F, No. 3.

A.

Policy No. 26229.

Annual premium, $56.94.
Dividend reduction, $5.55.
Am't actually rec'd, $51.39.

Received amount as above this 28th day of Aug,, 1878, by Jos. G. Cummins, ag't.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
R, form 9. of Hartford, Conn.
Hartford, Aug. 29, 1879.

Received (as in margin) the 1st q'r, 3d payment, due Aug. 29, 1879, on policy No. 26229, insuring the life of Maris Rhoads until Nov. 29, 1879; but this receipt shall not be valid unless payment is made, as stated in the margin hereof, at or before noon of the day when due, and this receipt countersigned by J. G. Cummins, agent at Media, Pa.

ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payments, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co., at Hartford, upon actual receipt of payments on or before day when due.

F, No. 4.

A.

Policy No. 26229.

Annual premium, $56.94.
Dividend reduction, $5.55.
Am't actually rec'd, $51.39.

Received amount as above this 29th day of Nov., 1879, by Jos. G. Cummins, ag't.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
R. form 9. of Hartford, Conn.
Hartford, Nov. 29, 1879.

Received (as in margin) the 2d q'r, 3d payment, due Nov. 29, 1879, on policy No. 26229, insuring the life of Maris Rhoads until Feb'y 29, 1880; but this receipt shall not be valid unless payment is made, as stated in the margin hereof, at or before noon of the day when due, and this receipt countersigned by J. G. Cummins, agent at Media, Pa.

ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payments, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co., at Hartford, upon actual receipt of payments on or before day when due.

98 F, No. 5.

A.

Policy No. 26229.

Annual premium, $56.94.
Dividend reduction, $5.55.
Am't actually rec'd, $51,39.

Received amount, as above, this 28th day of Feb'y, 1880, by H. C. Aller, ag't.

F.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
R. form 9. Of Hartford, Conn.
Hartford, Feb'y 29, 1880.

Received (as in margin) the 3d q'r, 3d payment, due Feb. 29, 1880, on policy No. 26229, insuring the life of Maris Rhoads until May 29, 1880; but this receipt shall not be valid unless payment is made, as stated in the margin hereof, at or before noon of the day when due, and this receipt countersigned by J. G. Cummins, agent at Media, Pa.

ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payments, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co., at Hartford, upon actual receipt of payments on or before day when due.

F, No. 6.

A.

Policy No. 26229.

Annual premium, $56.94.
Dividend reduction, $5.55.
Am't actually rec'd, $51 39.

Received amount, as above, this 28th day of May, 1880, by H. C. Aller, ag't.

F.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
R. form 9. Of Hartford, Conn.
Hartford, May 29, 1880.

Received (as in margin) the 4th q'r, 3d payment on policy No. 26229, insuring the life of Maris Rhoads until Aug. 29, 1880; but this receipt shall not be valid unless payment is made, as stated in the margin hereof, at or before noon of the day when due, and this receipt countersigned by H. C. Aller, agent at Phila., Pa.

ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payments, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co., at Hartford, upon actual receipt of payments on or before day when due.

F, No. 7.

A.

Policy No. 26229.

Annual premium, $56.94.
Dividend reduction, $6.34.
Am't actually rec'd, $50.60.

Received amount, as above, this 23d day of Aug., 1880, by H. C. Aller, ag't.

F.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
R. form 9. Of Hartford, Conn.
Hartford, Aug. 29, 1880.

Received (as in margin) the 1st q'r, 4th payment on policy No. 26229, insuring the life of Maris Rhoads until Nov. 29, 1880; but this receipt shall not be valid unless payment is made, as stated in the margin hereof, at or before noon of the day when due, and this receipt countersigned by H. C. Aller, agent at Phila., Pa.

ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payments, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co., at Hartford, upon actual receipt of payments on or before day when due.

99 F, No. 8.

A.

Policy No. 26229.

Annual premium, $56 94.
Dividend reduction, $6.34.
Am't actually rec'd, $50.60.

Received amount, as above, this 29th day of Nov., 1880, by H. C. Aller.

OFFICE OF THE CONTINENTAL LIFE INSURANCE COMPANY,
R. form 9. Of Hartford, Conn.
Hartford, Nov. 29, 1880.

Received (as in margin) the 2d q'r, 4th payment on policy No. 26229, insuring the life of Maris Rhoads until Feb'y 28, 1881; but this receipt shall not be valid unless payment is made, as stated in the margin hereof, at or before noon of the day when due, and this receipt countersigned by H. C. Aller, agent at Phila., Pa.

ROB'T E. BEECHER, Secretary.

N. B.—No agent has authority in any case to change the terms of this receipt, to waive or postpone payments, or to render binding or continue any policy of insurance, except by countersigning the receipts issued from the office of the Co., at Hartford, upon actual receipt of payments on or before day when due.

100 Copy.

EXHIBIT G.

Continental Life Insurance Company.

No. 1.

Claimant's Certificate.

All answers must be in affiant's own handwriting.

Notice is hereby given to the Continental Life Insurance Company, of Hartford, Conn., that Maris Rhoads, of Springfield, Delaware Co., Penn., is dead; that said Maris Rhoads was the same person whose life was assured by said company by their policies Nos. 26229, 1832, dated Aug. 29, 1879, for the sum of $3,000 and 2,000; that all premiums due prior to his decease had been duly paid upon said policies; that deceased did not violate any of the conditions of said policies, either in respect to residence, occupation, or otherwise; that the undersigned is the legal owner of said policies, and has a good and valid interest to the amount assured in the life of said deceased, and, in proof of claim under said policies, doth answer as follows:

1. Name of deceased? Maris Rhoads.
2. Residence since date of policy? Springfield, Delaware Co., Penna.
3. Occupation at date of assurance? Farmer.
4. Occupation since assurance was effected? Farmer.
5. Place and date of birth? Born March 12, 1818, Springfield, Del. Co., Penna.
6. Whence is the date of birth derived—from family record or otherwise? Family record.
7. Place and date of death? Springfield, Del. Co., Penn., Dec. 2d, 1880.
8. How long had you known deceased? 30 years.

9. State all the facts regarding cause and circumstances of death. An affection of the kidneys.

10. State the precise duration of the last illness of the deceased. Fifteen months.

11. Had the deceased any previous disease; and, if so, when, and what was the nature and duration of the same? No.

12. Were his habits of life correct, sober, and temperate? Had they always been so? If not, to what extent did he use spirituous liquors—wine, malt liquors, opium, chloral, or any other narcotic? Yes.

13. Did the deceased die by his own hand, or in consequence of a duel, or the violation of any law, or had he been convicted of a felony? No.

14. Had the deceased any other insurance on his life? If so, state in what companies, and for what amounts, and the dates of the policies respectively. No.

15. Did the deceased, during the term of assurance, reside outside the limits allowed by the policy? If so, when and where? No.

16. Name and residence of every physician who attended or prescribed for deceased during the last year prior to death, or since he became out of health? Dr. S. P. Bartleson, Clifton, Del. Co.

17. Have the parents, or brothers, or sisters of the deceased ever been afflicted with insanity, or with pulmonary or other constitutional disease, hereditary in its character? One brother died thirty years ago of consumption. None ever insane.

18. In what capacity, or by what title, do you make the claim? As administratrix.

19. Are you legally entitled to receive the entire amount payable on the policy? I am.

(Signed) ANN ELIZA RHOADS,
Administratrix.

Residence: Springfield, Del. Co., Penna.

Dated at Springfield, Del. Co., Penn., this sixth day of Jan., 1881.

Oath.

STATE OF PENNSYLVANIA, }
County of Delaware, } *ss:*

On this sixth day of January, A. D. 1881, personally appeared before me the above-named Ann Eliza Rhoads, to me known, and made oath that the foregoing statements by her made are true and full, to the best of her knowledge, recollection, and belief.

(Signed) WM. McCORMICK,
Justice of the Peace.

(Official authority of Wm. McCormick, as justice of the peace, duly certified to by Isaac Johnson, prothonotary.

101 No. 2.

Attending Physician's Certificate.

All answers must be in the physician's own handwriting.

1. How long have you been a practising physician, and where did you receive your medical education? 26 years. Jefferson Medical College, Philadelphia.
2. Name of deceased? Maris Rhoads.
3. Occupation? Farmer.
4. How long had you been acquainted with deceased? 30 years.
5. How long have you been his usual medical adviser? Were you his attending physician during his last illness and up to time of death? About 12 years. Yes.
6. Had the deceased any other medical attendant to your knowledge? If so, give name and address? No.
7. Was the deceased afflicted with any chronic disease? If so, what disease, and for what period? Calculus in the kidney; since June, 1879.
8. Date of first visit? Oct. 2d, 1879.
9. Date of last visit? Dec. 1st, 1880.
10. Place and date of death? Springfield, Del. Co., Dec. 2, 1880.
11. State the disease of which deceased died, and any important facts connected therewith. Was it complicated by any other disease? If so, by what disease, and for how long. Was a *post-mortem* examination made? By whom, and with what results? The patient became insane (melancholia) and refused to take sufficient nourishment, and died of inanition. No.
12. Was the deceased strictly temperate? Was the death caused proximately or remotely by the use of intoxicating drinks, opium, or any other narcotic? Yes. No.
13. Was there any special cause, proximate or remote, for the death in the habits, occupation, residence, family history, personal constitution, or previous diseases of deceased? No.
14. Was there any hereditary disease, either in the immediate or collateral branches of the family? If so, state what, and which members. No.
15. Have you stated all the material facts relating to the sickness of the deceased? Yes.
16. State real and apparent age of deceased. 63 years.

(Signed) S. P. BARTLESON, M. D.

Dated at Clifton Heights, this 7th day of January, 1881.

Oath.

STATE OF PENNSYLVANIA, } ss:
County of Delaware, }

On this seventh day of January, A. D. 1881, personally appeared before me the above-named S. P. Bartleson, M. D., a physician in regular standing, and made oath that the answers by him above

made and subscribed are true and full, to the best of his knowledge and belief, and that he has concealed no material fact from the company.

(Signed) WM. McCORMICK,
J. Peace.

102 No. 3.

Intimate Friend's Certificate.

All answers must be in affiant's own handwriting (who must be a responsible householder).

1. Name of deceaded. Maris Rhoads.
2. How long have you known deceased? Twenty-five years.
3. Place and date of death. Springfield, 12 mo., 2d, 1880.
4. Age of deceased at death. Sixty-three.
5. Was the deceased insured in the Continental Life Insurance Company? Number, date, and amount of policy. Yes. No. 26229, Aug. 29, 1877, $3,000, and No. 1832, Aug. 29, 1877, $2,000.
6. State all the facts within your knowledge relating to the cause of death. Was the disease which caused death chronic or long continued previous to demise? An affection of the kidneys. About 15 mos.
7. Was the deceased in the habit of using spirituous liquor; if so, to what extent; and did it affect his health? No.
8. What has been h— several occupations and h— places of residence? Farming; Springfield, Del. Co., Pa.
9. Have you any interest in the above policy? No.

(Signed) JOSEPH P. MARIS.

Oath.

STATE OF PENNSYLVANIA, } ss:
County of Delaware, }

On this sixth day of January, A. D. 1881, personally appeared before me the above-named Joseph P. Maris and made oath that the answers by his above made and subscribed are true and full, to the best of his knowledge and belief.

(Signed) WM. McCORMICK,
J. Peace.

No. 4.

Undertaker's Certificate.

All answers must be in affiant's own handwriting.

1. Name of deceased. Maris Rhoads.
2. Residence and occupation. Springfield, Del. county; farmer.
3. Did you inter the body of said deceased, and do you know that it was the body of the person described in the accompanying statement of the claimant in this case, beyond a doubt? I did, and know it to be the body of Maris Rhoads.

4. Date of birth. March 18th, 1818.
5. Age at death. Height. 63 years; 5 feet 9½.
6. Cause of death. Kidney disease and inanition.
7. Place and date of death. Springfield, Del. county.
8. Place and date of interment. Media Cemetery, Dec. 6, 1880.

(Signed) GEO. H. RIGBY, *Undertaker.*

Oath.

STATE OF PENNSYLVANIA, } ss:
County of Delaware, }

On this nineteenth day of January, A. D. 1881, personally appeared before me the within-named George H. Rigby, undertaker, and made oath that the answers by him within made and subscribed are true and full, to the best of his knowledge and belief.

[SEAL.] (Signed) A. P. OTTEY,
Notary Public.

[Authority of A. P. Ottley as notary public duly certified.]

No. 5.

Certificate of Officiating Clergyman.

I, Wm. M. Taylor, do hereby certify that I am the minister of the Episcopal church at Clifton, and that I officiated in my clerical capacity on the sixth day of December, 18—, at the funeral of Maris Rhoads, who died at Springfield on the second day of December, 1880.

(Signed) WM. M. TAYLOR,
Minister of St. Stephen's Church.

Sworn and subscribed before me, the 13th day of January, 1881, at Clifton Heights.

WM. McCORMICK,
J. Peace.

103 *Certificate of Local or State Agent.*

Date and amount of the last payment received upon said policy at your office.

No. 1832s, ¾, 29.78, H. C. Aller, Nov. ac.
No. 26229, ¾, 50.60, " " "

Instructions.

No. 1, claimant's certificate, is to be executed by the person legally entitled to receive the money, who must state by what title he or she makes the claim—whether as the beneficiary named in the policy, or as executor or administrator of a deceased beneficiary, or as guardian or other legal representative of a minor, or as trustee or as assignee. In case of assignment, a sworn statement of interest must be made and a copy of assignment furnished. Executors, administrators, and guardians must send certified copies of their appointment and certificate of qualification. Trustees, unless named in the policy, must exhibit their authority.

No. 2, attending physician's certificate, is to be executed by the physician attending the deceased in his or her last illness. If more than one physician was employed, the certificate of each must be obtained. The entire certificate must be in the handwriting of the physician.

No. 3, friend's certificate, is to be executed by some responsible householder intimately acquainted with the deceased cognizant of his or her death and not interested in the claim.

No. 4, undertaker's certificate, is to be executed by the undertaker or sexton who interred the deceased. If necessary, it may, with slight change, be executed instead by the clergyman who officiated at the interment.

When a policy payable by its terms to one beneficiary, if surviving, has, by the death of such beneficiary, become payable to another, proof of the death of such first beneficiary must be furnished by affidavit of respectable persons well acquainted with such deceased beneficiary.

When a policy is payable to the children in general of a person, or to any other class of persons whose names are not separately mentioned in the policy, proof must be furnished of how many children there are or of how many the class consists and the names and ages of the persons given. If any are minors, proof of the appointment of the guardian must be furnished.

In cases of suicide, a certified copy of the verdict and of the evidence on which such verdict is based before coroners will invariably be required; and in all cases of sudden death, especially from unknown cause, the particulars and result of any investigation held in the case will be required.

Every question must be distinctly and fully answered; and the company reserve the right to ask any further questions necessary under the circumstances of any particular case.

Each certificate must be sworn to before an officer duly authorized to administer oaths, and his authority and the genuineness of his signature must be attested by the clerk of a court of record.

If the oath be administered in a foreign country, the official character of the person administering the same or of the clerk or other officer of a court certifying thereto must be authenticated by a consul or minister of the United States residing in such foreign country.

If space upon the blanks is not sufficient for full and complete answers, such answers should be made upon a separate schedule.

104 EXHIBIT H.

Copy.

R. E. Beecher,

Sec. Continental Life Ins. Co., Hartford, Connecticut.

DEAR SIR: I called at the office to-day of H. C. Aller, your agent at Philadelphia, with reference to the payment of the two Rhoads policies. We agree that Feb'y 22, 1881, I mailed the proofs to him and that Feb. 23, 1881, he mailed them to you.

As these seem to be facts, it follows that the 90 days expired about one week ago. If this is correct, to what may I attribute the delay?

Y—, (Signed) F. C. HOOTON.

West Chester, 5, 28, 1881.

105 EXHIBIT I.

(Copy.)

J. S. PARSONS, Pres. R. E. BEECHER, Sec'y.

Continental Life Insurance Company, of Hartford, Connecticut.

Stenographic. In reply to yours of May 28th.

HARTFORD, *June* 1, 1881.

Mr. F. C. Hooton, West Chester, Pa.

DEAR SIR: In the matter of policies on the life of Maris Rhoads, deceased, being Nos. 26229 and 1832*s*, claim thereunder due this day, the proofs develop the fact that the death of the insured was self-inflicted. This is not a risk assumed by the company, as will be apparent on examination of the contracts. In such event the contracts provide that the company shall return the amount of premiums actually received. The amount which has been paid the company under No. 26229 is $722.53. Amount paid under No. 1832*s*, $407.72.

Upon the return of the policies discharged agreeably to the enclosed formed remittance of the amount due in each, as above stated, will be made.

105½ Very respectfully,

(Signed) BOB'T E. BEECHER, *Sec'y.*

106 EXHIBIT J.

Plaintiff's Bill of Particulars.

In the Circuit Court of the United States. April Term, A. D. 1881.

ANN ELIZA RHOADS, Adm'x [of] Maris Rhoads, Dec'd,
v.
THE CONTINENTAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, a Foreign Corporation. } No. 43.

The plaintiff expects to prove on the trial of the above cause that on or about October 7, 1869, the decedent took out a ten years' policy of insurance, known as an endowment policy, in said company in the sum of five thousand dollars. For this a policy, No. 11125, was given, the annual premium upon which was five hundred and ninety-four $\frac{10}{100}$ dollars; that at the time said insurance was effected the defendant, by its agents, assured said decedent that for a period of four years from that time the annual payment would be required to be half cash or other money and half note; that at the end of four years the cash or money payment would be terminated, and that all subsequent payments would be note payments, the annual profits of the company being sufficient to take up the
107 notes given in the first four years and sufficient to take up

the subsequently given notes as they fell due, and that said notes would not pass into the hands of any third party who might demand payment therefor.

That subsequently, on or about the first of April, A. D. 1872, and before the lapse of the aforesaid period of four years, said decedent consented to take out another policy in said company, No. 18510, for five thousand dollars, payable at death, the annual payment being three hundred and thirty-seven $\frac{80}{100}$ dollars.

That the decedent, learning of the deceit that had been practised upon him, expostulated with one Joseph G. Cummings, the agent of said company, residing at Media, Delaware county, Pennsylvania; whereup[on] the said Cummings admitted to the said decedent, in writing, which writing the plaintiff expects to produce at said trial.

That one Dunham, the general agent of the said company, withheld from the said decedent certain information.

The plaintiff expects to prove that said interview with said Dunham occurred at the office of said Cummings, in Media, at the time the insurance No. 11125 was effected; that said Cummings was present, and that he, said Cummings, assisted in the deception
108 of the decedent, and that Joseph G. Maris was present with said decedent and heard said conversation, to which he will testify. Said Cummings also admitted in the aforesaid writing that about the date of said writing said Joseph G. Maris had met one Norton, general agent of said company, who had explained everything to said Joseph G. Maris and satisfied him, and that he, said Joseph G. Maris, was now going to remain in the company, and that Arthur Burns was present and would remain in the company. The plaintiff expects to prove on said trial that said Cummings knew of the intimacy of said Joseph G. Maris and said Anthony Burns and said decedent, and knew that they each claimed to have been deceived by the agents of said company. And the plaintiff expects to prove in said cause the misrepresentation and deception practised upon each of them as germain to the issue.

Said plaintiff expects to prove that said Cummings was interested in procuring these insurances, he receiving therefor a percentage upon each and every payment made thereon to said company; that to procure said insurances he was guilty of deception, in which he was aided and abetted by said Dunham, whom the plaintiff
109 expects to prove was an officer of the company from Hartford.

That said decedent paid to the said defendant upon the policy No. 11125 all the premiums demanded of him, and paid them, with the interst computed thereon to this date, a large sum of money, to wit, the sum of seven thousand five hundred dollars, as set forth in the annexed statement. And said decedent paid upon the policy No. 18510 all the payments demanded upon said policy, to wit, the sum of three thousand one hundred and twenty-nine $\frac{74}{100}$ dollars, as will be found in the annexed statement.

The plaintiff will prove upon the trial of said cause that in August, A. D. 1877, when said policy No. 11125 was within about two years of becoming due, the decedent entered into some arrangement with

said defendant, by virtue of which arrangement said decedent was to be paid immediately three hundred and thirty dollars and to receive a policy, No. 1831, for one thousand dollars, payable in two years, and to surrender the policy No. 18510, and receive therefor two policies, No. 26229, for $3,000, and No. 1832, for $2,000, both payable at the death of the decedent, and that upon both of these policies said decedent paid all the money demanded of him until the date of his decease; that, with interest thereon, said decedent paid upon
110 policy No. 26229 the sum of eight hundred and sixty-three $\frac{81}{100}$ dollars, and upon policy No. 1832 said decedent paid all the money demanded up to the date of his decease, to wit, the sum of five hundred and ninety-seven $\frac{36}{100}$ dollars, both of which will be found set forth in the annexed statement.

The plaintiff expects to prove that the alteration in the policy No. 18510 was greatly to the advantage of the defendant, in that *that* the laws of the State of Connecticut required a large pecuniary deposit with the proper department of said State in policy No. 18510, and a much smaller deposit in the two policies issued in the place thereof.

The plaintiff expects to prove that the decedent died in December, A. D. 1880, insane; that the proofs of death required by said company were fully made out and deposited with the proper agent at Philadelphia.

That Dr. S. P. Bartleson, the decedent's physician, set forth that inanition was the immediate cause of death; that in no way, shape, or form did the proofs set forth that the insured died from his own hand; but that in ninety days from the date the proofs of death were furnished said defendant; said defendant refused payment of said two policies upon the ground that said proofs set forth the fact that the deceased's death was self-inflicted.

111 The plaintiff will therefore claim that the intimate connexion between the sub-settlement and the final settlement is such that the defendant's violation of his contract opens the entire question, and gives to the plaintiff the right to recover back all payments ever made, with interest thereon from the date of each payment.

The plaintiff will produce testimony to prove that the decedent was not possessed of such sound mind and judgment at the time of said alleged settlement in August, 1877, as would enable him to make a contract, and that he continued insane until the date of his death.

The plaintiff will also prove that the decedent's death was produced by natural causes, and *and* that he did not die from suicide or by his own hand.

The plaintiff will also offer in evidence upon said trial the proofs of death furnished to the company, and the written communication of said company declining payment.

The plaintiff will also produce and offer upon the trial of said cause the various notes given by said decedent to said defendant and returned to said decedent by said defendant's agent, set forth in the within statement.

F. C. HOOTON,
Att'y for Pl'ff.

112 (Endorsed:) 43. April sess., 1881. C. C. of U. S., E. dist. of Pa. Rhoads, adm'x, *vs.* Continental Life Ins. Co. of Hartford, Conn. Def't's bill of exceptions. Presented Ap'l 11, 1883. W. McKennan, cir. J. Filed June 2, 1883.

113 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit. April Sess., 1881.

ANN ELIZA RHOADS, Administratrix of Maris Rhoads, late a Citizen of the State of Pennsylvania,
vs.
THE CONTINENTAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, a Foreign Corporation, incorporated by the State of Connecticut. } No. 43.

Know all men by these presents that we, The Continental Life Insurance Company of Hartford, Connecticut, and The Philadelphia Trust Safe Deposit and Insurance Company of Philadelphia, Pennsylvania, are held and firmly bound unto Ann Eliza Rhoads, administratrix of Maris Rhoads, deceased, in the full and just sum of eleven thousand dollars, to be paid to the said Ann Eliza Rhoads, administratrix as aforesaid, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our corporate seals, and dated this first day of June, A. D. 1883.

Whereas lately, at a term of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in said court between the said Ann Eliza Rhoads, administratrix as aforesaid, plaintiff, and the said The Continental Life Insurance Company of Hartford, Connecticut, defendants, judgment was rendered against the said defendant, and the said defendants having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the
114 aforesaid suit, and a citation, directed to the said plaintiff, citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next ensuing:

Now, the condition of the above obligation is such that if the said Continental Life Insurance Company of Hartford, Connecticut, shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

J. S. PARSONS, [SEAL.]
President Continental Life Insurance Company.

Attest: ROB'T E. BUCHER, *Sec'y.*

THE PHILADELPHIA TRUST, SAFE DEPOSIT, AND INSURANCE CO. [SEAL.]
J. L. ERRINGER, *Pres't.*

Attest: W. L. DU BOIS, *Secretary.*

Sealed and delivered in presence of—
R. H. PHILPS,
GEO. F. CADY,
As to Phila. Trust, &c., Co.
E. D. SCHOLEY.

Surety approved.
WM. BUTLER, *Judge.*

[Endorsed:] No. 43. April sess., 1881. Circuit court United States. Rhoads, adm'x, *vs.* Continental Life Ins. Co. of Hartford Conn. Bond *sur* writ of error. Filed June 6, 1883.

115 UNITED STATES OF AMERICA, } *sct:*
Eastern District of Pennsylvania, }

I, Samuel Bell, clerk, do hereby certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit therein lately depending between Ann Eliza Rhoads, administratrix, &c., plaintiff, and The Continental Life Insurance Company of Hartford, Connecticut, defendant.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, at Philadelphia, in said district, this twenty-third day of June, A. D. 1883, and in the 107th year of the Independence of the United States.

[Seal U. S. Circuit Court, E D. Penn-sylvania.]

SAMUEL BELL,
Clerk Circuit Court U. S., East. Dist. of Penna.

Endorsed on cover: E. Pennsylvania C. C. U. S. No. 271. The Continental Life Insurance Company of Hartford, Conn., plaintiff in error, *vs.* Ann Eliza Rhoads, administratrix of Maris Rhoads, deceased. Filed 4th September, 1883.

19-237

FILED
JAN 22 1886
JAMES H. McKENNEY,
CLERK.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1885. No. 271.

THE CONTINENTAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, *Plaintiffs in Error*,

v.

ANN ELIZA RHOADS, ADMINISTRATRIX OF MARIS RHOADS, DECEASED, *Defendant in Error.*

Writ of Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

BRIEF FOR PLAINTIFFS IN ERROR.

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SAMUEL C. PERKINS,
Of Counsel.

Press of Henry B. Ashmead, 1102 and 1104 Sansom Street, Philadelphia.

In the Supreme Court of the United States.

OCTOBER TERM, 1885, No. 271.

THE CONTINENTAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, *Plaintiffs in Error*,

v.

ANN ELIZA RHOADS, Administratrix of MARIS RHOADS, deceased, *Defendant in Error*.

Writ of Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

BRIEF OF PLAINTIFFS IN ERROR.

I.—STATEMENT OF THE CASE.

Assumpsit: "Ann Eliza Rhoads, Administratrix of Maris Rhoads, late a citizen of the State of Pennsylvania, deceased" (defendant in error), against "The Continental Life Insurance Company of Hartford, Connecticut, a foreign corporation incorporated by the laws of the State of Connecticut, and a citizen thereof" (plaintiffs in error). Record, pp. 2, 3. The declaration (Record, p. 3) follows the writ, and the citizenship of the parties does not appear anywhere in the record other than as therein stated.

The action was to recover the amount of two policies

of insurance not under seal; one, No. 26,229, dated August 29, 1877, duly countersigned by the defendants' agent at Philadelphia, for $3000, upon the life of Maris Rhoads, for the term of his life, "in consideration of the representations made to them in the application for this policy, and of the annual premium of $219 [margin: "Payable $219.00 cash each 12 months, from August 29, 1877], to be paid to said company on or before the 29th day of August in each and every year during the continuance of this policy," for the benefit of Maris Rhoads (Record, pp. 41–44). The second policy, No. 1832, was dated the same day, duly countersigned by the defendants' agent at Philadelphia, for $2000, upon the life of Maris Rhoads, for the term of his life, "in consideration of the representations made to them in the application for this policy, and of the annual premium of $\$114\frac{52}{100}$ [margin: "Payable $114.52 cash each 12 months, from August 29, 1877], to be paid to said company on or before the 29th day of August in every year during the continuance of the policy," for the benefit of Maris Rhoads (Record, pp. 35–40).

The first policy was a "Life Annual Policy, with Profits," the second policy was a "Non-Forfeiture Life Policy, without Profits," but the distinction between the two is in no wise material to the present case. Each policy, in addition to other matters not material to the present case, contained the following clauses (Record, pp. 41, 42 and 36, 37): "*Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is granted by the company and accepted by the assured upon the following express conditions and agreements. . . . First.* That in case the said insured shall . . . die by his own hand, either sane or

insane . . . then this policy shall be null, void and of no effect.

"*Second. That the answers, statements and declarations contained in, or endorsed upon, the application for this insurance, which application is hereby referred to and made part and parcel of this contract, as if fully herein recited, and upon the faith of which this agreement is made, are warranted by the assured to be true in all respects, and that if this policy has been obtained by or through any fraud, misrepresentation or concealment, said policy shall be absolutely null and void.*

"*Third.* . . . that if the said assured shall not pay the said annual premium on or before noon of the several days hereinbefore mentioned for the payment of the same . . . this policy shall cease and determine, and said company shall not be liable for the payment of the sum insured, or any part thereof. . . .

"*Fourth.* [In policy No. 26,229]; *Fifth.* [In policy No. 1832], That in every case where this policy shall cease or become null and void, all payments thereon [and all dividend credits accruing therefrom (policy No. 26,229)], shall be forfeited to said company, *except that, if the said insured shall die by his own hand,* during the continuance of this policy, all premiums that shall have been received by said company hereon shall be returned to the said assured." . . .

The proposal referred to in policy No. 26,229 contained, *inter alia*, the following answers and declarations:

"15. Has the party ever had any of the following diseases (answer yes or no opposite each), *inter alia*, Insanity?" Answer, "No."

"11. Is the party now in good health, and free from any disorder, infirmity or weakness?" Answer, "Yes."

"It is hereby declared, That the above are fair and true answers to the foregoing questions, and that the party is now in good health, of sound body and mind, and temperate habits, and does ordinarily enjoy good health.

"And it is agreed by the undersigned that the above statements shall form the basis of the contract for assurance, and also that any untrue or fraudulent answers, any suppression of facts in regard to the party's health, or neglect to pay the premium on or before the day it becomes due . . . will render the policy null and void, and forfeit all payments thereon, except as expressly provided to the contrary in the policy; also that the assurance hereby applied for shall not be binding on this company until the amount of the first premium, as stated therein, shall be received by said company, or an authorized agent thereof, during the lifetime of the person whose life is insured, and the answers to the foregoing questions being true at the date of the delivery of the policy.

"Dated at Springfield this 21st day of August, 1877."

(Signed) "MARIS RHOADS, Applicant.

"In presence of JOSEPH G. CUMMINS."

(Exhibit D., Record, between pp. 44 and 45.)

The application, or proposal, upon which policy No. 1832 was issued consisted of one of the printed blanks of the company, in the same form as that for the application for policy No. 26,229, not filled up except with the name, residence and occupation of the insured, and a reference to the application for policy No. 26,229 (Exhibit C., Record, p. 44).

The premiums on both policies were paid for the first two years in advance (Exhibit E., Nos. 1 and 2, and F., Nos. 1 and 2, Record, pp. 45, 47, 48). After that the premiums were paid quarter yearly (Exhibits E., Nos. 3 to 8; F., 3 to 8, Record, pp. 45 to 47, 48 to 50). The language of the last receipts on each policy was "Hartford, Nov. 29, 1880. Received (as per margin) the 2d q'r, 4th payment on policy No. 1832 [No. 26,229], insuring the life of Maris Rhoads until Feb'y 28, 1881."

The insured, Maris Rhoads, died December 2, 1880; and the physician who attended him in his last illness stated in his certificate *which plaintiff furnished as one of the proofs of death*, in answer to the inquiry as to the "disease of which the deceased died, and any important facts connected therewith," that "*the patient became insane (melancholia), and refused to take sufficient nourishment, and died of inanition*" (Record, p. 52).

Letters of administration were issued to Ann Eliza Rhoads by the register of wills of Delaware county, Pa., December 30, 1880. There was no question raised respecting the letters, and consequently they do not appear in the record; it may, however, in order to anticipate possible inquiry, be stated as a fact that they were issued to "Ann Eliza Rhoads, administratrix of all and singular the goods and chattels which were of Maris Rhoads, late of the township of Springfield in the said county," and contain nothing as to the citizenship or even residence of the administratrix, the plaintiff.

May 28, 1881, F. C. Hooton, Esq., plaintiff's attorney, wrote R. E. Beecher, the secretary of the company at Hartford, stating that the proofs had been mailed to

him February 23, 1881, and that consequently the ninety days had expired about a week previous to the date of the letter, and inquiring the cause of the delay (Exhibit H., Record, pp. 55, 56). To this letter Mr. Beecher replied, under date of June 1, 1881: "The proofs develop the fact that the death of the insured was self-inflicted. This is not a risk assumed by the company, as will be apparent on examination of the contracts. In such event the contracts provide that the company shall return the amount of premiums actually received. The amount which has been paid the company under No. 26,229 is $722.53. Amount paid under No. 1832, $407.72. Upon the return of the policies discharged agreeably to the enclosed form, remittance of the amount due in each, as above stated, will be made" (Record, p. 56).

The summons in the case issued June 4, 1881 (Record, p. 2).

Under the declaration originally filed, and which contained the common money counts only, plaintiff, in answer to demand made, filed a bill of particulars, and served a copy of the same signed by his attorney of record on defendants' attorney. Subsequently, by leave of the court, the present declaration was filed as a substitute for the original declaration, and all bills of particulars thereunder. This bill of particulars stated, *inter alia*, "That the plaintiff will prove upon the trial of said cause that in August, A.D. 1877 . . . the decedent entered into some arrangement with said defendant, by virtue of which arrangement said decedent was to be paid immediately $330, and to receive a policy No. 1831 for $1000, payable in two years, and to surrender the policy No.

18,510, and receive therefor two policies, No. 26,229 for $3000, and No. 1832 for $2000 [being the policies mentioned in the first and second counts of the plaintiff's declaration], both payable at the death of the decedent, and that upon both of these policies said decedent paid all the money demanded of him until the date of his decease.

"That the decedent died in December, A.D. 1880, *insane*. . . .

"That Dr. S. P. Bartleson, the decedent's physician, set forth that inanition was the immediate cause of death. . . . The plaintiff will produce testimony to prove that the decedent was not possessed of such sound mind and judgment at the time of said alleged settlement in August, 1877, as would enable him to make a contract, and that he continued insane until the date of his death" (Exhibit J., Record, pp. 56–58).

The defences were:

That the life insured, Maris Rhoads, had had the disease of insanity, and was not at the time of making his proposals in good health and free from any disorder; infirmity or weakness, contrary to his declaration in his proposals.

That he died by his own hand, and therefore defendants were at most liable only to return the amount of premiums actually received, amounting to $1130.25 on the two policies.

The declaration (Record, pp. 3–10) contained two special counts, one on each policy and similar in form, setting out the respective policies *in hæc verba*, and then averring that the application was in all respects true,

and made by said Maris Rhoads; his death; that he had performed and fulfilled and did not violate any of the conditions and agreements of the policy according to the true intent and meaning thereof; the grant of letters of administration on his estate with profert thereof; the furnishing of proofs of death; the lapse of ninety days (the time fixed by the policy), and demand and refusal to pay.

A common count was added for interest, and on an account stated.

A bill of particulars filed by plaintiff set forth that the particulars of plaintiff's claim under all the counts were fully mentioned and set forth in the first two (Record, p. 10).

The defendants pleaded (Record, p. 14) *non assumpserunt* to the third count, and to the other two demurred (Record, pp. 11–14).

The demurrers were overruled, with leave to defendants to plead over (Record, p. 15).

Defendants filed seven special pleas to the first count of the declaration, and seven similar pleas to the second count; pleas Nos. 1, 3, 5, 7, 9, 11 and 13 applying to the first count, and the alternate numbers to the second count (Record, pp. 15–20). They also pleaded, 15, *Non assumpserunt;* 16, Tender; and 17, Accord and satisfaction (Record, p. 20).

Pleas Nos. 1 and 3 with proper inducement allege that the answers in the application to Questions 15 and 11 respectively were false and untrue, forasmuch as the insured, Maris Rhoads, had theretofore had the disease of insanity, and was insane at the time when the application was made and the policy issued (Record, pp. 15, 16).

Plea No. 5 alleged that the insured died by his own hand (Record, p. 17).

Plea No. 7 alleged generally that the policy was obtained by the fraud, covin and wrongful concealment of certain material information which ought to have been communicated to defendants, and by the misrepresentation of the insured (Record, p. 18).

Plea No. 9 alleged that the policy was obtained by the fraud and misrepresentation of the insured as to his health at the time of making the application and issuing the policy, and as to his freedom from any disorder, infirmity and weakness, and as to the diseases with which he had been afflicted, and by his suppression of the fact as to his health, that he had theretofore and then still had the disease of insanity (Record, p. 18).

Plea No. 11, after setting forth that the policy was issued upon condition that the answers, etc., in the application referred to and made part of the contract, etc., were warranted by said Maris Rhoads to be true in all respects, alleged generally that certain answers, etc., in said application were at the time of making thereof false and untrue (Record, p. 19).

Plea No. 13, after setting forth as in plea No. 11, and in addition as part of the condition that if the policy had been obtained by or through any fraud, misrepresentation or concealment the policy should be void, alleged that in the application it was declared that said Maris Rhoads was at the time when the application was made in good health, of sound body and mind, and did ordinarily enjoy good health; but that said declaration was false and untrue, and that said Maris Rhoads was not in good health, etc., and did not ordinarily enjoy good health (Record, pp. 19, 20).

The special pleas concluded with a verification.

The plaintiff filed special replications:

As to pleas Nos. 1–4 alleging respectively that the answers to Questions 15 and 11 in the applications were not false and untrue, and said Rhoads had not theretofore had insanity and was not insane *modo et forma* (Record, p. 21).

As to pleas Nos. 5 and 6, that said Rhoads did not die by his own hand (Record, p. 22).

As to pleas Nos. 7 and 8, that the policy was not obtained by the fraud, covin and wrongful concealment, etc., and by the misrepresentation of said Rhoads (Record, p. 22).

As to pleas Nos. 9 and 10, that the policy was not obtained by the fraud and misrepresentation of said Rhoads as to his health, and as to his freedom from any disorder, etc., and as to the diseases with which he had been afflicted, and by his suppression of the fact that he had theretofore had and still had the disease of insanity *modo et forma* (Record, p. 22).

As to pleas Nos. 11 and 12, that it was not true that certain answers, etc., of said Rhoads in the application were false and untrue (Record, p. 23).

As to pleas Nos. 13 and 14, that the declaration of said Rhoads in his application that he was in good health, etc., was not false and untrue, and that it was not true that he was not at the time, etc., in good health, etc., *modo et forma* (Record, p. 23).

As to plea No. 15, similiter and issues; 16, no tender; 17, no accord and satisfaction (Record, p. 23).

Defendants *rejoined* as to the replications to their pleas Nos. 3, 4, 5, 6, 11 and 12, similiter (Record, p. 24).

They *demurred* to the replications to their remaining special pleas (Record, pp. 24–27), but the demurrers were overruled, and the defendants then *rejoined* similiter (Record, p. 28).

Defendants afterwards by leave of the court filed additional pleas: No. 18, as to the first count of the declaration, that the policy was issued and accepted upon the express condition and agreement that in case said Maris Rhoads should become so far addicted to any habit as to impair his health seriously, the policy should be void, and that he had long before his death become so far addicted to the habit of not taking sufficient nourishment to sustain life as to impair his health seriously; No. 19, a similar plea to the second count (Record, p. 29).

These additional pleas were afterwards on motion of plaintiff stricken off by the court, and the defendants excepted (Record, p. 30); 13th Assignment of Error, *post*, p. 21.

The same day, April 3, 1883, the case was tried before Hon. William McKennan, Circuit Judge, and a special jury, and the result was a verdict for plaintiffs, $\$5568\frac{66}{100}$, the full amount of both policies with interest.

On the trial the plaintiff put in evidence the two policies of insurance, dated August 29, 1877 (Exhibits A. and B., Record, pp. 35, 41); the applications produced by defendants on call, dated August 21, 1877 (Exhibits C. and D., Record, pp. 44, 45), and the receipts for premiums from the time of issuing the policies to November 29, 1880, inclusive (Exhibits E. and F., Record, pp. 45–50).

She then called Morton Chase, who testified that insured died December 2, 1880, in bed, at his home in Springfield township, Delaware county, Pa.; that he was buried about four days afterwards; that March 29, 1883, witness had subpœnaed Dr. Bartleson, the attending physician of insured at time of his death, but he was confined to his house by a recent accident; and that Mr. Rigby, the undertaker at the burial of the insured, was dead (Record, p. 31).

She then put in evidence the proofs of death, produced by defendants on call (Exhibit G., Record, pp. 50–55).

It was admitted that blanks for proofs of death were sent by defendants' agent in Philadelphia to Mr. Hooton, plaintiff's attorney, December 11, 1880, and the proofs of death were sent by Mr. Hooton to said agent, February 22, 1881, and that he forwarded them to the company at Hartford, Conn., the next day, and that they were duly received by the company (Record, pp. 31, 32).

She then put in evidence the letter from Mr. Hooton to R. E. Beecher, secretary of the company, dated May 28, 1881, produced by defendants on call, and the answer of Mr. Beecher, dated June 1, 1881 (Exhibits H. and I., Record, pp. 55, 66).

Plaintiff then closed.

Defendant's counsel then moved for a non-suit, on the ground that the policies contained the condition that "in case the said insured shall die by his own hand, either sane or insane . . . then this policy shall be null, void and of no effect;" and provided, "That in every case where this policy shall cease, or be or become null

and void, all payments thereon shall be forfeited to said company, except that, if the said insured shall die by his own hand during the continuance of this policy, all premiums that shall have been received by said company hereon shall be returned to the said assured." Which motion the court refused, and the defendants excepted (Record, p. 32); 1st Assignment of Error, *post*, p. 17.

They then offered in evidence the copy of the plaintiff's bill of particulars which had been served upon them, dated July 1, 1881, signed by plaintiff's attorney (Exhibit J., Record, pp. 56–58), as showing an admission on the part of the plaintiff that the insured, at the time the policies were taken out, "was not possessed of such sound mind and judgment . . . as would enable him to make a contract, and that he continued insane until the date of his death."

Which offer was objected to by the plaintiff and overruled by the court, and the defendants excepted (Record, p. 32); 2d Assignment of Error, *post*, p. 17.

They then offered in evidence the certificate of the attending physician annexed to the proofs of death (Exhibit G., No. 2, Record, p. 52), furnished by the plaintiff to the company defendants under the requirements of the policies, showing the cause of death, said certificate containing the following:

"11. State the disease of which deceased died, and any important facts connected therewith. Was it complicated by any other disease? If so, by what disease, and for how long? Was a *post-mortem* examination made? By whom, and with what results?" *Answer*— "The patient became insane (melancholia), and refused to take sufficient nourishment, and died of inanition.

No." To the admission in evidence of which the plaintiff objected as incompetent, and the court overruled the offer, and the defendants excepted (Record, pp. 32, 33); 3d Assignment of Error, *post*, p. 18.

Defendants then closed.

The judge then charged the jury (Record, pp. 33, 34) to the effect that it was shown by the receipts of the defendants that the payments of the premiums were made down to November 29, 1880, inclusive, and that Mr. Rhoads died in December following, before any other payment became due; and that a short time after Mr. Rhoads' death the proofs of loss which were required by the rules of the company were furnished to the company; and that this was "enough to entitle the plaintiff to recover the amounts of the policies, unless something has been shown by the defendants as a reason why they should not meet this liability. There is no evidence, as the court regards it, against the sufficient proof of the plaintiff's right to recover. If you believe, therefore, the evidence offered by the plaintiff—and there is no reason why you should not—the plaintiff is entitled to recover the amounts of these two policies, with interest, from the time fixed—ninety days after the date when the proofs of loss were furnished." He then proceeded to answer the points submitted by defendants' counsel, as follows:

"1st. That it appearing from Answer 11 in the certificate of the attending physician, which is attached to and forms part of the proofs of death furnished by the plaintiff under the requirements of the policy, to wit: '11. State the disease of which deceased died, and any important facts connected therewith. Was it compli-

cated by any other disease? If so, by what disease, and for how long? Was a *post-mortem* examination made? By whom, and with what results?' *Answer*—'The patient became insane (melancholia), and refused to take sufficient nourishment, and died of inanition. No':—that the insured died by his own hand, insane, the plaintiff can at most only recover the amount of the premiums paid upon the policies in suit, as stated in the letter of the secretary of the company, dated June 1, 1881, to Col. F. C. Hooton."

"That point is answered as follows: The certificate of the physician was offered and admitted in evidence as an essential part of the proof of death required by the rules of the defendants to be furnished by the representatives of the insured. It is to be considered only as evidence that the plaintiff has complied with this requirement, and is entitled to maintain her suit in so far as compliance with it may so entitle her, and not as an admission by the plaintiff of the truth of the physician's statement as to the cause of death, or of the mental condition of the insured at that time" (Record, pp. 33, 34); 8th Assignment of Error, *post*, p. 19.

"The point is therefore refused" (Record, pp. 33, 34); 7th Assignment of Error, *post*, p. 19.

"It is for you, therefore, in the view that the court takes of the physician's certificate, to say that there is no evidence that all the conditions imposed by these policies were not complied with" (Record, p. 34); 8th Assignment of Error, *post*, p. 19.

"Also, 2d. That if the jury find for the plaintiff, the defendants are entitled to have the premiums for the two quarters constituting the balance of the year ending August 29, 1881, deducted from the amounts insured.

"This point is refused" (Record, p. 34); 9th Assignment of Error, *post*, p. 20.

"We do not take the view of the contract which he does. We are of opinion that the plaintiff was not bound to pay, and, therefore, is not subject to a deduction of any portion of the premiums which accrued after his death. It is, however, true that by the terms of the original policy the premiums were for a year in advance, and the policy was upon the payment of a year's premium extended to the end of that year. As it appears by the receipts of the company for premiums paid, a change was made by which the annual premiums were made quarterly premiums, and at the beginning of each quarter the insured might pay, and the company would receive, a quarter's premium in advance, and the policy was extended to the end of the quarter covered by the premiums so paid.

"So that we are of opinion that the insured here did all that he was required to do by his contract to keep this policy alive, and that the plaintiff is entitled to recover the amount" (Record, p. 34), 10th Assignment of Error, *post*, p. 20.

Counsel for defendants then excepted to the charge, alleging error (Record, pp. 34, 35):—

1st. In refusing defendants' 1st point (7th Assignment of Error, *post*, p. 19);

2d. In the charge to the jury in answer to defendants' 1st point (8th Assignment of Error, *post*, p. 19);

3d. In refusing defendants' 2d point (9th Assignment of Error, *post*, p 20);

4th. In the charge to the jury in answer to defendants' 2d point (10th Assignment of Error, *post*, p. 20).

The 11th and 12th Assignments of Error are not pressed.

The 4th, 5th and 6th Assignments of Error relate to the jurisdiction of the court; that it does not affirmatively appear from the record (4); that it does not sufficiently appear (5); and that it appears from the Record that the court had no jurisdiction (6). *Post*, p. 19.

ASSIGNMENTS OF ERROR.

1. Because the learned judge erred in refusing the motion of the defendants for a non-suit, which was made upon the ground that the two policies of insurance given in evidence by the plaintiff, and which were the foundation of the cause of action, both contained the following conditions: "That in case the said insured shall die by his own hand, either sane or insane . . . then this policy shall be null, void and of no effect," and provided, "That in every case where this policy shall cease, or be or become null and void, all payments thereon shall be forfeited to said company; except that if the said insured shall die by his own hand during the continuance of this policy, all premiums that shall have been received by said company hereon shall be returned to the said assured;" and that the proofs of death showed that the insured died by his own hand.

2. Because the learned judge erred in overruling the offer by defendants in evidence of a copy of plaintiff's bill of particulars, dated July 1, 1881, signed by F. C. Hooton, Esq., attorney for plaintiff, and furnished to defendants' attorney about the middle of the same

month, and which copy contained (*inter alia*) the following:

"That the plaintiff will prove upon the trial of said cause that in August, A.D. 1877 . . . the decedent entered into some arrangement with said defendant, by virtue of which arrangement said decedent was to be paid immediately $330 and to receive a policy No. 1831 for $1000, payable in two years, and to surrender the policy No. 18,510, and receive therefor two policies, No. 26,229 for $3000, and No. 1832 for $2000 [being the policies mentioned in the first and second counts of the plaintiff's declaration], both payable at the death of the decedent, and that upon both of these policies said decedent paid all the money demanded of him until the date of his decease. . . .

"That the decedent died in December, A.D. 1880, *insane*. . . .

"That Dr. S. P. Bartleson, the decedent's physician, set forth that inanition was the immediate cause of death. . . . The plaintiff will produce testimony to prove that the decedent was not possessed of such sound mind and judgment at the time of said alleged settlement in August, 1877, as would enable him to make a contract, and that he continued insane until the date of his death."

3. Because the learned judge erred in overruling the offer by defendants in evidence of the certificate of the attending physician annexed to the proofs of death furnished by the plaintiff to the company defendants, under the requirements of the policy, to show the cause of the death; said certificate containing the following:

"11. State the disease of which deceased died, and any important facts connected therewith. Was it com-

plicated by any other disease? If so, by what disease, and for how long? Was a *post-mortem* examination made? By whom, and with what results?" *Answer*—"The patient became insane (melancholia), and refused to take sufficient nourishment, and died of *inanition*. No."

4. Because it does not affirmatively appear from the record that the court below had jurisdiction of the case.

5. Because it does not appear sufficiently from the record that the court below had jurisdiction of the case.

6. Because it appears from the record that the court below had no jurisdiction of the case.

7. Because the learned judge erred in refusing to charge, as requested in defendants' first point, to wit: "That it appearing from Answer 11 in the certificate of the attending physician, which is attached to and forms part of the proofs of death furnished by the plaintiff, under the requirements of the policy, to wit: '11. State the disease of which deceased died, and any important facts connected therewith. Was it complicated by any other disease? If so, by what disease, and for how long? Was a *post-mortem* examination made? By whom, and with what results?' *Answer*—'The patient became insane (melancholia), and refused to take sufficient nourishment, and died of *inanition*. No:'—that the insured died by his own hand, insane, the plaintiff can at most only recover the amount of the premiums paid upon the policies in suit as stated in the letter of the secretary of the company, dated June 1, 1881, to Col. F. C. Hooton."

8. Because the learned judge erred in charging the jury in answer to defendants' first point, that "The certificate of the physician was offered and admitted in

evidence as an essential part of the proof of death required by the rules of the defendants, to be furnished by the representatives of the insured. It is to be considered only as evidence that the plaintiff has complied with this requirement, and is entitled to maintain her suit in so far as compliance with it may so entitle her, and not as an admission by the plaintiff of the truth of the physician's statement as to the cause of death, or of the mental condition of the insured at that time. The point is therefore refused. It is for you, therefore, in the view that the court takes of the physician's certificate, to say that there is no evidence that all the conditions imposed by these policies were not complied with."

9. Because the learned judge erred in refusing to charge as requested in defendants' second point, to wit: "That if the jury find for the plaintiff, the defendants are entitled to have the premiums for the two quarters constituting the balance of the year ending August 29, 1881, deducted from the amounts insured."

10. Because the learned judge erred in charging the jury in answer to defendants' second point, to wit: "This point is refused. We do not take the view of the contract which he does. We are of opinion that the plaintiff was not bound to pay, and, therefore, is not subject to a deduction of any portion of the premiums which accrued after his death. It is, however, true that, by the terms of the original policy, the premiums were for a year in advance, and the policy was, upon the payment of a year's premium, extended to the end of that year. As it appears by the receipts by the company for the premiums paid, a change was made by which the annual premiums were made quarterly pre-

miums, and at the beginning of each quarter the insured might pay, and the company would receive, a quarter's premium in advance, and the policy was extended to the end of the quarter covered by the premium so paid. So that we are of opinion that the insured here did all that he was required to do by his contract to keep this policy alive, and that the plaintiff is entitled to recover the amount."

11. The court erred in overruling defendants' demurrers to the first and second counts of plaintiff's declaration.

12. The court erred in overruling defendants' demurrers to plaintiff's replication.

13. The court erred in striking off defendants' additional pleas, which had been filed by its leave.

BRIEF OF ARGUMENT.

FIRST.

The Record fails to show that the court below had jurisdiction.

This question is the first to be considered, and is included in the 4th, 5th and 6th Assignments of Error (*ante*, p. 19).

The citizenship of plaintiffs in error is expressly alleged in the writ and declaration. The citizenship of defendant in error (plaintiff below) nowhere appears in the Record; and even her residence does not appear anywhere except in certificate of claim, which she made as one of the proofs of loss.

Plaintiff below is described in the writ and declaration as "Anna Maria Rhoads, Administratrix of Maris

Rhoads, *late* a citizen of the State of Pennsylvania." It need hardly be argued that the words "late a citizen" apply to plaintiff's intestate, and not to plaintiff herself; and in a case where a personal representative of a decedent is a party to the Record, the citizenship of that personal representative must appear, irrespective of the citizenship of the decedent.

The certificate of plaintiff as claimant is really no part of the Record. It was one of the papers put in evidence by the plaintiff (Record, p. 31), as composing the proofs of loss required by the company (Exhibit G, Record, pp. 50, 51), and merely stated her *residence* as Springfield, Pennsylvania.

"Citizenship and residence, as often declared by this court, are not synonymous terms." Harlan, J., in *Robertson* v. *Cease*, 97 U. S. 648 (citing *Parker et al.* v. *Overman*, 18 How. 137).

The proofs of death put in evidence by plaintiff herself (Record, p. 31) were, as stated in the charge to the jury (Record, pp. 33, 34) as to another certificate composing part of those proofs, "to be considered only as evidence that plaintiff has complied with this requirement, and is entitled to maintain her suit in so far as compliance with it may so entitle her, and not as an admission by plaintiff." The certificate of plaintiff was not offered in evidence by the defendants, and they cannot be bound in any way by it. So that, really, even the mere fact of residence, if it can be considered material at all as equivalent to an averment of citizenship, cannot be regarded by this court. It is not in the Record, and therefore not before them.

"It is the settled doctrine of this court that, in cases where the jurisdiction of the Federal courts depends

upon the citizenship of the parties, the facts essential to support that jurisdiction must appear somewhere *in the Record.*" Harlan, J., *Robertson* v. *Cease*, *supra*, p. 648. "The jurisdiction of the Circuit Court is limited in the sense that it has none except that conferred by the Constitution and laws of the United States. The presumption is that a cause is without its jurisdiction unless the contrary affirmatively appears." *Turner* v. *Bank of North America*, 4 Dall. 8; *Ex parte Smith*, 94 U. S. 455; *Robertson* v. *Cease*, 97 U. S. 646. "In cases where jurisdiction depends upon the citizenship of the parties, such citizenship, or the facts which in legal intendment constitute it, should be distinctly and positively averred in the pleadings, or they should appear affirmatively, and with equal distinctness, in other parts of the Record." *Railway Company* v. *Ramsey*, 22 Wall. 322; *Briges* v. *Sperry*, 95 U. S. 401. "It is not sufficient that jurisdiction may be inferred argumentatively from averments" in the pleadings. *Brown* v. *Keene*, 8 Pet. 112.

Robertson v. *Cease*, *supra*, is a conclusive authority upon the point now under consideration; and that case has been followed in *Grace* v. *American Central Ins. Co.*, 109 U. S. 278, where this court, of its own motion, reversed a judgment upon the ground that the Record did not show a case within the jurisdiction of the Circuit Court, although no question as to the jurisdiction had been raised by the parties. And these cases were again affirmed in *Börs* v. *Preston*, 111 U. S. 252. Mr. Justice Harlan, who delivered the opinion in *Robertson* v. *Cease*, *supra*, also delivered the opinion in the two latter cases.

The mere fact that letters of administration were

granted in Pennsylvania, as appears by the declaration (Record, pp. 6, 9), does not show, either affirmatively or argumentatively, that the administratrix was a citizen of Pennsylvania. The Act of Pennsylvania in reference to the granting of letters of administration (Act of March 15, 1832, § 22, 1 Brightly's Purdon's Dig. 512, pl. 29) provides:

"Whenever letters of administration are by law necessary, the register having jurisdiction shall grant them in such form as the case shall require, to the widow, if any, of the decedent, or to such of his relations or kindred as by law may be entitled to the residue of his personal estate, or to a share or shares therein, after payment of his debts; or he may join with the widow in the administration such relation or kindred, or such one or more of them, as he shall judge will best administer the estate, preferring always, of those so entitled, such as are in the nearest degree of consanguinity with the decedent, and also preferring males to females; and in case of the refusal or incompetency of every such person, to one or more of the principal creditors of the decedent applying therefor, or to any fit person at his discretion."

There is no provision restricting the grant of administration to citizens or even residents of Pennsylvania.

It does not appear anywhere, or in any shape, whether plaintiff was the widow of the decedent, or what her relation was to him. The similarity of name merely affords room for conjecture that she was either his widow or some other relative; but for anything that the Record shows, or any inference that may be drawn, she may have been his mother, or sister, or more distant relative, or a creditor, not a relative, residing anywhere in the United States, and, as possibly as not, in Connecticut, the state of which plaintiffs in error are citizens.

SECOND.

The notice signed by the plaintiff's attorney of his bill of particulars, under the common counts of the original declaration, was competent evidence for the defendants as an admission by the attorney of record of the party of facts therein stated (2d Assignment of Error, *ante*, p. 17).

The power of an attorney-at-law to bind his client by admission for the purpose of evidence or otherwise in the progress of the suit need not be argued. The offer was not of a bill of particulars filed in the cause, whether such bill be considered as technically part of the record or not; but it was the offer of a distinct admission, signed by the plaintiff's attorney, of certain particular facts. That he intended to use these facts as part of his claim in the case as originally made, but afterwards withdrawn, does not affect the admission of the particular paper offered. Granting, as was the fact, that the bill of particulars itself was withdrawn by leave of the court as part of or connected with the pleadings in the case, that could not and did not amount to a denial of the statement of facts contained in the notice signed by plaintiff's attorney and served on defendants' attorney.

It was competent *prima facie* evidence, subject of course to any rights that the plaintiff might have to contradict or explain the admissions; but the fact remained unalterable, that certain facts, the relevancy and materiality of which to the issue are too apparent

to need elaboration, were distinctly and positively averred and admitted.

This is not a question as to the proper office or as to the sufficiency of a bill of particulars. It may be conceded that the purpose and office of a bill of particulars is not to furnish evidence to the defendant, and that the defendant has no right to make any demand for the correction of a bill of particulars for the purpose merely of getting evidence for himself. The proper office of a bill of particulars is merely to limit the generality of a complaint, and prevents surprise on the trial. It is not to furnish evidence or to state the grounds upon which the plaintiff claims, but only to point out items and particulars included in his claim, so as to identify them; and this, which is conceded, was all that was determined in the cases of *Drake* v. *Thayer*, 5 Robertson (N. Y. Sup. Ct.) 694 (1868); *Fullerton* v. *Gaylord*, 7 Id. 551 (1867); *Bangs* v. *Ocean Bank*, 53 How. Prac. Rep. 51 (1877); *Moran* v. *Morrissey*, 28 Id. 100 (1864); and *Seaman* v. *Low*, 4 Bosworth 337 (1859). All these cases were upon objections to the sufficiency of bills of particulars.

There are besides express authorities that, where a bill of particulars sets forth facts which are in favor of the defendant, it may be given in evidence by the defendant to show such facts. *Colson et al.* v. *Selby*, 2 Espinasse 452 (1796); where, in assumpsit, defendant pleaded in abatement that promises were made by himself and another jointly—issue was joined—and on the trial it appeared from the bill of particulars that some of the articles had been furnished to the defendant jointly with the person named in the plea; and Lord Kenyon, C. J., held that the plaintiff was bound

by his bill of particulars, which supported the defendant's plea, and therefore he non-suited the plaintiff, and a rule to set aside the non-suit was afterwards refused by the court. If a bill of particulars has this effect, much more should a notice thereof signed by plaintiff's attorney.

Rymer v. *Cook et al.*, 1 Moody & Malkin 85, note *a* (1827); assumpsit; plea, general issue; and in order to prove part payment, defendants relied upon the particulars of demand which had been given under the judge's order, and in which plaintiff had given defendants credit for certain sums paid. Plaintiff's counsel insisted upon the right to reply upon the ground that the particulars of demand must be considered as being put in by the defendants, *just as if the latter had endeavored to give evidence of admissions made in any other form;* that they could only become admissions by the defendants' admitting the other side of the accounts. Defendants' counsel contended that the particulars were not the defendants' evidence; but, having been given under the judge's order, were as much part of the proceedings in the cause as the declaration or plea. But it was held by Hullock, B., that it was the defendants' evidence, and therefore the plaintiff was entitled to reply, as he would not have been if it had been held that the defendants had given no evidence, and says, "I should have received the evidence of the admission without proof of the judge's order or proof of the handwriting of the plaintiff's attorney; therefore we may withdraw the judge's order altogether, and then this becomes merely an admission, requiring proof as other admissions do." The learned baron consulted Mr. Justice Bayley, who was then sitting on the criminal side

of the court, and who expressed his assent to the baron's opinion; and the plaintiff's counsel was permitted to address the jury in reply.

One of the counsel of the plaintiff in that case was Sir Frederick Pollock.

And so learned and careful an author as *Mr. Chitty*, in his *General Practice*, vol. 3, pp. 616, 617, considers it so *fully settled that the bill of particulars of a plaintiff's demand is evidence for the defendant against the plaintiff where it contains admissions favorable to the defendant*, that, in laying down the rules and practice for preparing a bill of particulars, he deems it necessary to give a caution, as follows:

"The best course is to state that the plaintiff proceeds for a named sum, being the real just balance, thus impliedly but not expressly admitting any payment on account, or at least without specifying in particular any items for moneys paid on account, and always avoiding the admission of any set-off."

"Particulars of demand should also be so framed that the opponent cannot read them in evidence for himself, without a proper accompanying qualification or circumstance against himself, corresponding with the fact."

It should be noted that a distinction is to be made between a bill of particulars of demand furnished by the plaintiff and a notice of special matter or matters by way of set-off given by the defendant. The latter cases depend upon statutory enactments and considerations which do not apply in the case of a plaintiff's bill of particulars; and this explains *Brittingham* v. *Stevens*, 1 Hall, N. Y. 379 (1828), in which no authorities are cited by the court, and no reason given except

the mere statement as to the sole object of a bill of particulars in general; all of which may be true, but does not do away with admissions of facts incorporated in a bill of particulars, or in the notice thereof signed by plaintiff's attorney, although such facts may not be necessary to the object of the bill of particulars. And the same reason disposes of the cases of *Miller* v. *Johnson*, 2 Espinasse 602 (1797), and *Harington* v. *MacMorris*, 5 Taunton 88 (1813).

A sworn answer in chancery, even if it be withdrawn by leave of the court from the record, does not destroy the fact that the defendant has under oath admitted the facts therein stated; and that admission the plaintiff is entitled to the benefit of, subject to any explanation that the defendant may afterwards give. So in the present case the withdrawal of the bill of particulars from the files of the court did not do away or destroy the fact that the plaintiff, by her attorney, in a legitimate exercise of his authority as such attorney of record in the case, did make an averment and admission of certain facts; and to the benefit of this admission the plaintiff is entitled.

The fact that a defendant may plead absolutely contradictory pleas does not touch the point under discussion.

THIRD.

The proofs of death were competent evidence *prima facie* as against the plaintiff who furnished them of any admissions contained therein of facts against her interest; not that she was absolutely bound by them, but in the absence

of explanation or contradiction such admissions were conclusive.

This point covers the 1st Assignment of Error (*ante*, p. 17), the refusal to non-suit; 3d Assignment (*ante*, p. 18), refusal to admit the certificate of the physician when offered by defendants; 7th Assignment (*ante*, p. 19), refusal of defendants' first point; and 8th Assignment (*ante*, p. 19), exception to the answer to that point.

It is immaterial to discuss the question whether a refusal to non-suit is ground of error; for if the plaintiffs in error are correct in the proposition now contended for, it is sufficiently presented by the other assignments.

The "proofs of death required" are specified upon each of the policies, although not contained in the body of them; and were furnished in accordance with the requirement (Record, pp. 38, 43).

Each policy made the amount of insurance payable "within 90 days after due notice and *satisfactory* evidence of the death of the said insured" (Record, pp. 36, 41). The phraseology is special and exact; it was not only necessary for the claimant to give notice and furnish proof of the mere fact of death of the insured; "*satisfactory evidence*" of the fact must be furnished. The company "had an undoubted right to demand and insist upon such proofs as the law would adjudge to be reasonable and *satisfactory*." *Ins. Co.* v. *Rodel*, 95 U. S. 232, 237, where the language of the policy was identical with that in each of the policies in the present case. And the proofs required were reasonable, and although satisfactory as to the fact of death, yet if from the

very nature of the requirements and of the facts disclosed thereby a cause of death was stated which would exempt the company from liability, such facts were clearly *prima facie* evidence as admissions in favor of the company and against the claimant's interest.

The first proof was "a certificate from the physician who attended the party during his last sickness, *stating particularly the nature of the disease*, its duration, and the time of death;" and this certificate was required to be, and actually was, sworn to (Record, p. 52). This certificate was made out upon the blank furnished by the company (Record, p. 31), and set forth: "11. State the disease of which deceased died, and any important facts connected therewith. Was it complicated by any other disease? If so, by what disease, and for how long. Was a *post-mortem* examination made? By whom, and with what results? *The patient became insane (melancholia), and refused to take sufficient nourishment, and died of inanition.* No."

It was absolutely necessary that plaintiff should furnish this proof in the form she did. May on Ins., § 465, 2d edit., p. 704, in reference to "Preliminary Proofs," says: "If any particular facts are required to be proved, or any particular mode of proof is required, the facts must be proved, and in substantially the mode specified."

The character of the act was not considered in any of the forms in which the present question was presented in the progress of the case. Had the proposition contended for as to the effect of the admission contained in the proofs of death been sustained by the court below, then the way would have been opened for further

evidence, by way of explanation or rebuttal of the natural conclusions to be deduced from that admission, and for instructions to the jury based upon the evidence, which would have presented further and interesting questions involving the consideration of the character, force and results of such admission as affecting the plaintiff's claim under the policies. But the evidence offered of the admissions having been rejected, it matters not what they were, except that they were certainly against the plaintiff's interest, and as such relied upon by defendants.

The condition of each policy was, "That in case the said insured . . . shall die by his own hand, either sane or insane, . . . then this policy shall be null, void and of no effect" (Record, pp. 36, 37, 41, 42). Had the certificate of the physician been allowed the effect contended for as an admission by plaintiff against her interest, then the construction of the admission, and of the clause in the policies as cited, would have presented other questions, involving the validity of the defence set up in defendants' fifth and sixth pleas (Record, p. 17).

The proofs of death are inadmissible as evidence for the plaintiff to prove the issue on trial; *but the statements in them will be taken against the insured as admissions against interest;* though he may show the statements themselves are without foundation, and were inadvertently made. May on Ins., § 465, and cases cited in notes. *Mut. Ben. Ins. Co.* v. *Newton,* 22 Wallace (U. S.) 32; *Conn. Ins. Co.* v. *Schwenk,* 94 U. S. 593.

"The court erred in excluding from the jury the proofs presented of the death of the insured when offered by the company. When the plaintiff was per-

mitted to show what the agent and officers of the company admitted the proofs established, it was competent for the company to produce the proofs thus referred to and use them as better evidence of what they did establish.

"But independently of this position, the proofs presented were admissible as representations on the part of the party for whose benefit the policies were taken, as to the death *and the manner of the death of the insured.* They were presented to the company in compliance with the condition of the policy requiring notice and proof of the death of the insured as preliminary to the payment of the insurance money. *They were intended for the action of the company, and upon their truth the company had a right to rely.* Unless corrected for mistake, the insured was bound by them."

"All that we now hold is that the preliminary proofs are admissible as *prima facie* evidence of the facts stated therein against the insured, and on behalf of the company." *Ins. Co.* v. *Newton, supra.*

The ruling in this case was re-affirmed in *Ins. Co.* v. *Higginbotham,* 95 U. S. 380, 390 (1877). See also *Ins. Co.* v. *Rodel,* Id. pp. 232, 237.

None of these cases contained the clause "sane or insane."

But the effect of such a clause was construed by this court in *Bigelow* v. *Berkshire Life Ins. Co.,* 93 U. S. 284 (1876), as including all cases of "intended self-destruction, whether the insured was of sound mind or in a state of insanity."

The facts set forth in the physician's certificate were clearly relevant to the issue; and if the evidence offered was competent to show their admission, the offer should

have been received. There was no question as to relevancy; it was purely as to competency of the mode of proof.

FOURTH.

The contract in each policy was for the payment of an annual premium in advance, and the liability for total annual premium was not modified or diminished, but only the mode of payment changed to quarterly, and therefore the defendants should have had the two quarterly payments for the current year, which were unpaid at the death of the insured, deducted from the amounts insured.

This proposition includes the 9th and 10th Assignments of Error (*ante*, p. 20), relating to the charge of the court upon defendants' second point.

Each policy was "in consideration" of the representation made in the application "and of the *annual premium* [of $114.52 and $219.00 respectively] *to be paid* to said company on or before the 29th day of August in each and every year, during the continuance of this policy" (Record, pp. 35, 36 and 41).

The receipts for the premiums for the first two years were for *first* and *second* payments; the subsequent receipts were for "*first quarter third payment*," etc., etc., in the third year; and the last two receipts were for "*first quarter fourth payment*," etc., "*second quarter fourth payment*" (Record, pp. 45–50).

The premiums were *annual*, and the whole amount was due for each year during the life of the insured, from the date of the policies; the *mode of payment* alone

was changed to quarterly. The *annual* premium was an "indebtedness" to the company; and they were clearly entitled to the deduction of any balance remaining unpaid at the death of the insured for the current year upon that annual premium, under the clause in each policy "deducting therefrom [the amount of the policy] all indebtedness to the said company on account of this policy, if any, then existing" (Record, pp. 36, 41).

The deduction claimed amounted on the two policies to $160.76, with 22 months and 23 days' interest, to date of verdict, $18.33—in all, $179.09, a substantial difference.

FIFTH.

The additional pleas of defendants should not have been stricken off. They were filed by leave of the court, and put in a distinct and definite form a material issue, and could not have been a surprise to the plaintiff (13th Assignment of Error, *ante*, p. 21).

No ground was alleged for the motion to strike these pleas off, nor was any stated by the court for its action (Record, p. 30). The pleas are printed p. 29 of the Record. They were not open to the objection that they amounted to the general issue; the other special pleas of defendants were not objected to on any such ground, and these were of like character.

It is respectfully submitted that the judgment should be reversed, with costs.

SAMUEL C. PERKINS,
Of Counsel for Plaintiffs in Error.

119-231

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1885. No. 271.

The Continental Life Insurance Company of Hartford, Connecticut,

Plaintiffs in Error,

vs.

Ann Eliza Rhoads, Administratrix of Maris Rhoads, deceased,

Defendant in Error.

Writ of Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

PAPER BOOK OF DEFENDANT IN ERROR.

F. C. HOOTON,
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Attorneys for Defendant in Error.

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Paper Book of Defendant in Error.

BRIEF OF ARGUMENT OF DEFENDANT IN ERROR.

Considering the assignments of error in the order observed in the plaintiff's paper book, we inquire,

FIRST.

Does it sufficiently appear that the Court below had jurisdiction.

(1.) The declaration pursues the writ and presents that Ann Eliza Rhoads, Administratrix, &c., of Maris Rhoads, late a citizen of the state of Pennsylvania, deceased, complains of the Continental Life Insurance Company of Hartford, Conn., a foreign corporation, incorporated under the laws of the state of Connecticut, and a citizen thereof, who has been summoned, &c.

It further presents that letters of administration were on the 30th day of December, A. D., 1880, duly granted upon the estate of the said Maris Rhoads, deceased, to the said Ann Eliza Rhoads by the Register of Wills of Delaware county, in the state of Pennsylvania. The plaintiff below, therefore, sued as the duly constituted personal representative of Maris Rhoads, a deceased citizen of the state of Pennsylvania. As such personal representative she could have no existence outside the limits of that state.

Vaughan *vs.* Northrop, 15 Pet. p. 1.
Aspden *vs.* Nixon, 4 How. p. 467.

She could not sue elsewhere no matter what her personal citizenship might be.

In Pennsylvania, the personal representative of a deceased citizen is, in contemplation of law, within that state, and within the jurisdiction of the proper court. He must give security, if an administrator. If a foreign executor, he must likewise give security. The 16th section of the Act of Assembly of Pennsylvania, approved March 15th, 1832 (Purd. Dig. 408, pl. 19), provides as follows: "Before the Register shall issue letters "testamentary to any Executor, not being an inhabitant of this "commonwealth, he shall take from him a bond, with two or "more sufficient sureties, being inhabitants of this common-"wealth, respect being had to the value of the estate to be ad-"ministered, in the name of the commonwealth, with the fol-"lowing condition, etc."

The 27th section of the same act (Purd. Dig. 409, pl. 21), provides as follows: "If any Register shall grant letters tes-"tamentary to any person, not being an inhabitant of the com-"monwealth, or shall grant any letters of administration to any "person or persons whatsoever, without having in either case "taken a bond and sureties in the manner hereinbefore pre-

"scribed, such letters shall be void; any person acting "under them shall be deemed, and may be sued, and in all re- "spects treated as an executor of his own wrong; and the "Register granting the same and his sureties, shall be liable to "pay all damages which shall accrue to any person by reason "thereof."

The 27th section of the Act of 29th of March, 1832 (Purd. Dig. 454 pl. 239), provides "that when any executor, administrator or "guardian, shall have removed from this state, or shall have "ceased to have any known place of residence therein during "the period of one year or more, the Orphans' Court, having "jurisdiction of the account of such executor, administrator or "guardian, may, on the application of any person interested, "and after a citation shall have returned, served or published "as is hereinafter provided, make a decree vacating such letters "testamentary or of administration, and remove such guardian, "and award new letters to be granted in such form as the case "may require, by the register having jurisdiction, upon such "security as the court shall think proper."

In Sarkie's Appeal, reported in 2d Penn. St. R. 157, Mr. Justice Sargeant, in delivering the opinion of the Supreme Court, says: "The Act of the 15th of March, 1832, prescribes cer- "tain general rules according to which the register is to be "governed in granting letters of administration, but still there "is a legal discretion to be exercised by him in many cases. "He may grant them to the widow or relations, or he may "join one or more of them with the widow, preferring those "of the nearest degree of consanguinity, and males to females; "and even then are not entitled, if incompetent, of which the "register must judge. Among the causes of incompetency "appears to be non-residence in the state, as may be inferred "from the provisions of the 27th section of the Act of the 29th "of March, 1882, that when an administrator has *removed* "from the state or *ceased* to have any known place of residence "therein during the period of one year or more, the Orphans' "Court may vacate the letters of administration, and the 27th "section of the Act of the 15th of March, 1832, which pro-

hibits "letters testamentary being granted to any person not being an "inhabitant of this commonwealth."

Executors and administrators in Pennsylvania are regarded as at all times within the jurisdiction of the court having control of their accounts. The first section of the Act of the 27th of March, 1854 (P. L. 214), provides: "In all cases where ex- "ecutors, administrators, assignees or other trustees shall not re- "side within the jurisdiction of the court having control of their "accounts, proceedings may be had and suits may be brought "against them by creditors and others interested in said estates, "in the courts where such accounts are to be settled, and pro- "cess may be served by the proper officers of said counties; or "their deputies, on said executors, administrators, assignees, or "other trustees, beyond the bounds of said counties, as if they "resided therein, or upon any surety on their official bonds, "with like effect as if they resided within the jurisdiction of the "courts, having control of their accounts."

The 57th section of the Act of 29th of March, 1832, prescribes the manner of proceeding in the Orphans' Court to obtain the appearance of a person amenable to its jurisdiction, and to obtain obedience to its orders and decrees. It directs the manner of service of the citation to be issued by the court, and provides, "if the defendant be not found and have no known "dwelling-place within the county, such citation may be served "in like manner, upon the person or persons, who may be the "surety or sureties, of such party, in any bond or recognizance "given by him for the performance of any trust or duty in re- "spect of which such citation may have issued;" * * * * and if there is no surety on whom service can be made, as aforesaid, upon return of that fact being made under oath or affirmation, the court may award a second citation, and make an order for publication of the same in two or more newspapers, in such place or places, and for such length of time as the court may designate.

The legal personal representative of a deceased citizen of Pennsylvania, whether such personal representative be an executor or administrator, is, in contemplation of law, resident

within the state, and is at all times amenable to the jurisdiction of the proper courts of that state.

(2.) The narr presents that the defendant below is a *foreign* corporation. This is in itself an allegation that the plaintiff and defendant are not citizens of the same state.

The meaning is not that the corporation is foreign to the court, for that goes without saying, when it is further added that it was incorporated by the laws of the state of Connecticut, and is a citizen thereof.

The judiciary Act of 1789 confined jurisdiction on the ground of citizenship, to cases where the suit was between the citizens of a state *where the suit was brought*, and a citizen of another state. Congress thus conferred upon the Federal Courts but a portion of the jurisdiction contemplated by the Constitution.

The Act of 1875 has made the jurisdiction on the ground of citizenship commensurate with the limits defined by the Constitution. It is therefore now only necessary that the plaintiff and defendant shall be citizens of different states, and this sufficiently appears by the presentation of the fact in the declaration of the plaintiff below that the defendant is a *foreign* corporation.

(3.) The residence of the plaintiff below appears by the record. She sets forth in her certificate of claim (Record, page 51,) that her residence is Springfield, Delaware county, Penna. It is under her oath, and is part of the proofs of death which are, by the terms of the policy, required to be furnished as a condition precedent to recovery. These proofs of death were produced on call by the defendant below, and offered in evidence by the plaintiff below, and are brought here by the bill of exceptions of the plaintiff in error (Record, page 31).

Proper citizenship need not be averred in pleadings if it otherwise affirmatively appear by the record.

Railway Co. *vs.* Ramsey, 22 Wall. 322.
Briges *vs.* Sperry, 95 U. S. 401.

Citizenship, when spoken of in the Constitution, in reference

to the jurisdiction of the Federal Courts, means nothing more than residence.

Jessee of Cooper *vs.* Galbraith, 3 W. C. C. 546.
Gassies *vs.* Ballou, 6 Pet. 761.
Shelton *vs.* Tiffin, 6 How. 163.
Lessee of Butler *vs.* Farnsworth, 4 W. C. C. 101.

For this reason a corporation created by, and transacting business in a state, is to be deemed an inhabitant of the state, capable of being treated as a citizen for all purposes of suing and being sued.

Louisville R. R. Co. *vs.* Letson, 2 How. 497.
Marshall *vs.* Balt. & Ohio R. R. Co, 16 How. 314.
Weedan *vs.* Camden & Amboy R. R. Co., 1 Gr. 420.
Greeley *vs.* Smith, 3 Storey, 76.

Whatever of conflict there may have been in the rulings of this court on this subject prior to the adoption of the fourteenth amendment to the Constitution, that amendment would appear to settle the question. It provides "that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside."

It thus appears that residence is *the* thing which determines state citizenship. *Reside* is the term used. A resident of a state is either a citizen or an alien. If Ann Eliza Rhoads is a citizen of the United States she is a citizen of Pennsylvania, by reason of her *residence* in that state. If she is not a citizen of the United States she is an alien, and as such entitled to sue in the Federal Courts.

Allegation of citizenship is sufficiently made where it appears fairly, and so as to leave no reasonable doubt of what states the parties are citizens. Jones *vs.* Andrews, 10 Wall. 327.

A petition filed in the District Court of Louisiana, alleging that the defendant had caused himself to be naturalized an American citizen and resided at Baton Rouge, sufficiently alleges citizenship in Louisiana.

Glassee *vs.* Ballou, 6 Pet. 761.

An averment that plaintiffs were a firm doing business in a

certain place and had been for 18 months; is sufficient averment of domicile there.

Express Co. *vs.* Kountze Bros., 8 Wall. 342.

(4.) No question was raised in the court below of want of jurisdiction by reason of the requisite citizenship of the parties not appearing. After a trial upon the merits it will be presumed by this court that the court below had jurisdiction, for the 5th section of the Act of Congress, approved March 3, 1875, entitled "an Act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from state courts, and for other purposes," provides that if "it shall appear to the satisfaction of the circuit court at any time after suit brought (or removed thereto) that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said circuit court, or that the parties to said suit have been improperly or collusively joined either as plaintiffs or defendants for the purpose of creating a case cognizable (or removable) under this act, the said circuit court shall proceed no further therein, but shall dismiss the suit," &c.; and thus made it the duty of the circuit court to determine the question. It is therefore to be presumed that it did not appear that any want of jurisdiction existed.

(5.) The *fact* is not denied that Ann Eliza Rhoads is a citizen of the state of Pennsylvania, and has been all her life. Her deceased husband was, as shown by the proofs of death, born in the same township (indeed on the eame farm), where he died.

The omission to state in the declaration that Ann Eliza Rhoads was a citizen of Pennsylvania, was merely clerical, and such an omission this court will, in conformity with the practice in Pennsylvania, permit to be cured, if necessary, by amendment to the record here, on motion.

In the recent case of Shryock et al., *vs.* Basehore, in the Supreme Court of Pennsylvania, reported in 1 Norris, 159, Shryock and Rhoads, who were assignees of an insolvent state bank, brought an action against B. as the maker of a note to the bank. *Held*, (reversing the court below,) that B. could not be permitted to set up a defence to the note that the assignment

was void, as being transgressive of the Bankrupt Act of 1867. *Held*, that this was substantially an action by the bank against its debtor, and although it ought to have been brought by the assignees in the name of the bank, still this was amendable in the Supreme Court.

In Waite *vs.* Palmer, in the same court, reported in 28 Pa. St. R. 192. It is stated as a rule, *to allow an amendment in the Supreme Court, or to treat the record as amended where it is in furtherance of justice, and the case has been tried on its merits, if no real injury will be done to the party complaining of it.* The court saying there is ample authority for this where the amendment is one to which the party would have been entitled below, and citing Wampler *vs.* Shissler, 1 W. & S. 370.
Morris *vs.* McNamee, 5 Harris, 173.
Miller *vs.* Weeks, 10 Ib. 89.

As a basis for such a motion the defendant in error offers to file her affidavit in this court, setting forth amongst other things that she was at the time of the commencement of this action, and still is, a citizen of the state of Pennsylvania. (See Appendix.)

SECOND.

Was the bill of particulars properly excluded?

The original declaration and the bill of particulars thereunder, were withdrawn March 1, 1882, by leave of court.

On the back of the declaration (Record, page 3), the following order of the court below is endorsed:

March 1, 1882. The court grant leave to the plaintiff to file the within declaration, as an amendment to the record, and as a substitute for the declaration filed June 4, 1881, and all bills of particulars thereunder, and for the additional narr filed October 15, 1881.

When F. C. Hooton, Esq., then sole attorney for the plaintiff below, came to see and hear his witnesses, he found that the proof would not sustain his bill of particulars, and he, by leave of Court, substituted a new narr and withdrew the bill of particulars. The latter, from that time, no longer existed, and were entirely without effect for any purpose.

Courts in New York, considering a bill of particulars as part of the pleadings, have denied any effect to them as evidence.

Brittingham *vs.* Stevens. 1 Hall, 379.
Cowan & Hills, Notes to Phillips Evid. 361, and cases there cited.

But we need not consider whether a bill of particulars of a plaintiff's demand is evidence of admissions against him. That is not the question here presented. It is, whether a bill of particulars, *after it has been withdrawn*, can be offered in evidence against the plaintiff for any purpose. It is quite clear upon principle and authority that it cannot, and we need not enlarge upon it.

Even where a bill of particulars is amended, the original bill is not evidence against the plaintiff as an admission.

Hartell *vs.* Seybert, 1 Troubat, and
Haly's Practice, 424. Title, Bills of Particulars.

A case stated, which has been abandoned by pleading to issue, is not evidence of an admission of facts.

Gibson, C. J. McLughan *vs.* Bovard 4 Watts, 308.

So where an affidavit of defence, going to the whole cause of action, is withdrawn, and a new affidavit of defence filed, the original affidavit of defence is not admissible in evidence, as an admission under a rule of court which provides that items not denied shall be deemed admitted by the party.

O'Conner *vs.* Iron Mountain Co., 56 Pa. St. 234.

A Bill in Chancery is not evidence as an admission of facts, as against the complainant, except in the case of pedigree, and not then unless the party claim or derive title in some manner under the plaintiff or defendant in the Chancery suit.

Owens *vs.* Dawson, 1 Watts, 149.

In above case, Rogers, J., in delivering the opinion of the Supreme Court of Pennsylvania, said: "Answers in Chancery, which are confessions, are strong evidence against the party who makes them. But a Bill in Chancery wherein many of the facts are mere suggestions of counsel, made for the purpose of extorting an answer from the defendant, will not be in evidence, except to show that such a bill did exist, and that certain facts

were in issue between the parties, in order to introduce the answer on the deposition of witnesses. It is not admitted in courts of law as evidence to know any fact either alleged or denied in the bill."

The bill of particulars in this case was a mere inference of counsel for which the party was not responsible, and was withdrawn as soon as it was known that it was not and could not be sustained by the proof.

THIRD.

Was the certificate of the attending physician annexed to the proofs of death admissible in evidence against the plaintiff below to show the cause of the death?

Certainly not. The plaintiff below was in no manner responsible for what that certificate contained. It was not her act, and was furnished at the instance of the defendants below, and for their benefit and protection. The language of the learned Judge of the Court below, in his charge to the jury on this point, contains the whole argument. He says: "The certificate of the physician was offered and admitted in evidence as an essential part of the proofs of death, required by rules of the defendants to be furnished by the representatives of the insured. It is to be considered only as evidence that the plaintiff has complied with this requirement, and is entitled to maintain her suit in so far as compliance with it may so entitle her, and not as an admission by the plaintiff of the truth of the physician's statement as to the cause of death, or of the mental condition of the insured at that time."

The physician's certificate was offered for the purpose of showing that the death of the insured was self-inflicted. The certificate contained nothing from which such a conclusion could be drawn. Its exclusion therefore as evidence did no injury to the plaintiff in error.

When a patient, suffering from disease, (calculus of the kidneys) loses his mind and refuses to take sufficient nourishment and dies of inanition, it presents simply the case of a sick man *unable* to take sufficient nourishment to support life. It was

the *stomach*, the *system* of the sick man which *refused* the food, and so the certificate must be read.

FOURTH.

Was the claim of the plaintiff below subject to any deduction for premiums which accrued after the death of the insured?

It is true that the premiums were, by the terms of the policy, payable annually in advance, and for the first two years they were thus paid. But a new arrangement was then made between the insured and the company, as is shown by all the subsequent receipts for premiums, by which the insurance was continued from quarter to quarter, and by quarterly payments in advance, instead of from year to year, by annual payments.

All such subsequent receipts are similar in form to the last receipt given. November 29th, 1880, (Record pp. 47 and 50), to-wit:—Received (as in margin) the 2nd q'r, 4th payment on policy No. , insuring the life of Maris Rhoads until February 28th, 1881, etc. It thus appears that the life of Maris Rhoads was insured, by the payments made November 29th, 1880, until February 28th, 1881. He died December 2d, 1880, within the current quarter, and no indebtedness then existed to the company on account of the policy.

FIFTH.

Should the additional pleas have been stricken off?

After many delays, incident to multifarious demurrers and pleas filed by the defendant below, the cause was set down and reached for trial. The plaintiff appeared in court with all her witnesses, when her counsel were notified that on the day preceding, two additional pleas had, by leave of court, been filed by the defendant below. These pleas, one to each policy, (Record, p. 29,) were in substance that Maris Rhodes, in violation of the conditions of the policies, "long before his death, had become so far addicted to the habit of not taking sufficient nourishment to sustain life as to impair his health seriously, in so much that in truth and in fact he died of inanition."

Counsel for the plaintiff below at once offered to file formal

replications to these pleas, if defendant below would at once join issue thereon and not delay the trial. This proposition was not accepted, but it was insisted that time must be allowed for demurrers to the replications, which would throw the case off for another term (six months.) Plaintiff below, by her counsel, then moved to strike off the additional pleas, on the ground that any testimony which the defendant below could offer thereunder would be admissible under his general issue plea of "non assumpsit."

The court below sustained the motion and struck off the pleas. This was clearly right and no error was committed.

F. C. HOOTON,
R. T. CORNWELL,
Counsel for Defendant in Error.

APPENDIX.

AFFIDAVIT OF ANN ELIZA RHOADS.

Ann Eliza Rhoads, Administratrix, &c., of Maris Rhoads, deceased,

vs.

The Continental Life Insurance Company of Hartford, Connecticut.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

No. to Term, 188

STATE OF PENNSYLVANIA, }
COUNTY OF DELAWARE, } ss:

Ann Eliza Rhoads, the above named plaintiff, being duly affirmed, says that she is the widow and administratrix of Maris Rhoads, who died on the second day of December, A. D., 1880. That at the time of his death she resided with him in Springfield township, Delaware county, Pennsylvania, where she still resides; and that she was at the time of the commencement of the above suit or action, and still is, a citizen of the state of Pennsylvania.

Affirmed and subscribed February 8th, A. D., 1886, before me.

[SEAL.] A. P. OTTEY, Notary Public.

ANN ELIZA RHOADS.